

\* \* C O N F I D E N T I A L \* \*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

JENNIFER S. FISCHMAN,

Plaintiff,

-against-

Index No. 18-cv-08188

mitsubishi chemical holdings, america, inc.;  
mitsubishi chemical corporation; mitsubishi  
chemical holdings corporation; nicholas oliva, in  
his individual professional capacities; donna  
costa, in her individual and professional  
capacities; and john does 1-10, in their  
individual and professional capacities,

Defendants.

-----X

July 30, 2021  
11:05 a.m.

DEPOSITION of CHAD STALLER, a  
Non-Party witness, taken by the attorneys for the  
respective parties, pursuant to Notice, held at  
the above time and place before Toni Musacchia, a  
Stenotype Reporter and Notary Public within and  
for the State of New York.

1                   \* \* C O N F I D E N T I A L \* \*

2   A P P E A R A N C E S:

3   VALLI KANE & VAGNINI LLP  
4   Attorneys for Plaintiff  
5   600 Old Country Road  
6   Garden City, New York 11530

7   BY:   MATTHEW L. BERMAN, ESQ.

8   CLARICK GUERON REISBAUM LLP  
9   Attorneys for Defendant, Donna Costa  
10   220 Fifth Avenue, 14th Floor  
11   New York, New York 10001

12   (NOT PRESENT)

13   GORDON REES SCULLY MANSUKHANI, LLP  
14   Attorneys for Defendants, Mitsubishis  
15   Chemical Holdings America, Inc., Donna Costa and  
16   Nicholas Oliva  
17   One Battery Park Plaza, 28th Floor  
18   New York, New York 10004

19   BY:   BRITTANY L. PRIMAVERA, ESQ.

20   SHEARMAN & STERLING, LLP  
21   Attorneys for Defendant,  
22   Mitsubishi Chemical Holdings Corporation  
23   599 Lexington Avenue  
24   New York, New York 10222

25   BY:   JEROME FORTINSKY, ESQ.

26   ALSO PRESENT:

27   Jennifer Fischman

\* \* C O N F I D E N T I A L \* \*

FEDERAL STIPULATIONS

IT IS HEREBY STIPULATED AND AGREED by and  
between the parties hereto, through their  
respective Counsel, that the certification,  
sealing and filing of the within examination will  
be and the same are hereby waived;

IT IS FURTHER STIPULATED AND AGREED that  
all objections, except as to the form of the  
question, will be reserved to the time of the  
trial;

IT IS FURTHER STIPULATED AND AGREED that  
the within examination may be signed before any  
Notary Public with the same force and effect as  
if signed and sworn to before this Court.

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2                   THE REPORTER: It is hereby stipulated  
3                   and agreed by and between counsel for all  
4                   parties present that pursuant to Federal  
5                   Rule of Civil Procedure 28 (a) (2), this  
6                   deposition is being conducted remotely and  
7                   that the court reporter shall be permitted  
8                   to administer the oath to the witness via  
9                   videoconference. The witness and all  
10                  counsel are in separate remote locations and  
11                  participating via Zoom, telephone or any web  
12                  conference meeting platform under the  
13                  control of Bee Reporting Agency, Inc.

14                  It is further stipulated that this  
15                  videoconference will not be recorded in any  
16                  manner and that any recording without the  
17                  express written consent of all parties shall  
18                  be considered unauthorized, in violation of  
19                  law and shall not be used for any purpose in  
20                  this litigation or otherwise.

21                  Before I swear in the witness, I will  
22                  ask each counsel to stipulate on the record  
23                  that I, Toni Musacchia, the court reporter,  
24                  may swear in the witness even though I am  
25                  not physically in the presence of the

1                   \* \* C O N F I D E N T I A L \* \*

2           witness and that there is no objection to  
3           that at this time, nor will there be an  
4           objection at a future date.

5           MR. BERMAN:   So stipulated.

6           MS. PRIMAVERA:   So stipulated.

7           MR. FORTINSKY:   So stipulated.

8           THE REPORTER:   Ms. Primavera, can you  
9           represent that to the best of you knowledge  
10          and belief, that the witness appearing today  
11          via web conference is, in fact, Mr. Chad  
12          Staller?

13          MS. PRIMAVERA:   Yes, I can represent  
14          that.

15   C H A D   S T A L L E R,

16          the witness herein, having first been duly  
17          sworn by Toni Musacchia, a Notary Public in and  
18          for the State of New York, was examined and  
19          testified as follows:

20   DIRECT EXAMINATION

21   BY MR. BERMAN:

22          Q.   Please state your name for the record.

23          A.   Chad Staller.

24          Q.   Please state your address for the  
25          record.

1 C. Staller - Confidential

2 A. 1608 Walnut Street, Suite 801,  
3 Philadelphia, Pennsylvania 19103.

4 Q. Good morning, Mr. Staller, my name is  
5 Matthew Berman, I am attorney representing  
6 Jennifer Fischman in the lawsuit that you're  
7 testifying on.

8 I would like to ask you a series of  
9 questions, which you'll be answering having sworn  
10 to tell the truth.

11 If you don't hear one of my questions, please  
12 let me know and I will do my best to enunciate it  
13 more loudly so that it is more understandable and  
14 audible.

15 If you don't understand my question, please  
16 let me know and I will do my best to rephrase the  
17 question to make it more understandable.

18 If you do answer my question, I will take  
19 that to mean that you understand the question.

20 As you know we have a court reporter here  
21 today, she can only take down the testimony of  
22 one of us at a time. So I would ask you to  
23 please do your best to wait until I finish my  
24 complete question before you begin to answer,  
25 even if you anticipate what I am going to say.

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2 In return, I will do my very best to make sure  
3 that I wait until you have completed your  
4 response before I move on to the next question.  
5 It's very important that one of us speak at a  
6 time.

7 Also, as you know the court reporter can only  
8 take down verbal responses so please do your best  
9 to answer with a "yes" or "no" or some other  
10 verbal response so that she can get that  
11 recorded.

12 From time to time you may hear an objection  
13 from one of the attorneys. In the case of such  
14 an objection, I will still expect you to respond  
15 to the question I pose unless you are  
16 specifically instructed by counsel not to answer.

17 Do you understand that although we're not in  
18 a formal courtroom setting today, you're still  
19 under the same oath that you will be under in a  
20 court of law?

21 A. I do, yes.

22 Q. Do you understand the rest of the  
23 instruction I provided so far?

24 A. I understand the collective  
25 instructions, yes.

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2 Q. During the course of today's testimony,  
3 if at any time you wish to take a break, please  
4 let me know and I will be happy to accommodate  
5 any request for a break by any participant. I  
6 just ask that you respond to the question before  
7 we take that break.

8 In addition, the only instructions I have is,  
9 to the extent possible, please do not respond to  
10 any of my questions by providing privileged or  
11 otherwise confidential information that you are  
12 not supposed to be disclosing; is that okay?

13 A. That is.

14 Q. All right. Are you currently taking or  
15 refraining from taking any medication which could  
16 affect your ability to testify truthfully and  
17 accurately today?

18 A. No.

19 Q. Do you have any medical condition which  
20 might affect your ability testify truthfully and  
21 accurately today?

22 A. No.

23 Q. Do you suffer from any medical condition  
24 which impairs your memory?

25 A. I don't believe so.

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2 Q. You've been deposed before, correct?

3 A. Yes.

4 Q. And you testified at trial?

5 A. Yes.

6 Q. So in preparation for your deposition  
7 today did you --

8 MR. BERMAN: Withdrawn.

9 Q. What activities, if any, did you engage  
10 in order to prepare for today's deposition?

11 A. I got reacquainted with my file.  
12 Reviewed my report in this matter and had a brief  
13 conversation with Ms. Primavera yesterday.

14 Q. Without revealing substance of any  
15 conversations, have you had any other  
16 conversations with Ms. Primavera or anyone else  
17 in preparation for today's testimony?

18 A. No.

19 Q. So you have prepared a report in this  
20 matter, correct?

21 A. Yes.

22 Q. I am going to -- have you also provide  
23 was your CV?

24 A. I believe so. I provided that to Ms.  
25 Primavera and she sent it to you.

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2 MR. BERMAN: I'll ask the court reporter  
3 to pull up an exhibit. It should be mark as  
4 CV, underscore, Staller, underscore, pic.

5 Can we mark this as Staller Exhibit 1.

6 (Staller Exhibit 1, marked for  
7 identification.)

8 MR. BERMAN: For identification, this is  
9 a five-page PDF document. Labeled at the  
10 top, Center for Forensic Economic Studies.  
11 Underneath that, Chad Staller, J.D., M.B.A,  
12 M.A.C., C.V.A.

13 Toni, can you slowly scroll through the  
14 document so the witness can see how many  
15 pages it has.

16 Q. Mr. Staller -- how should refer to you  
17 today; is it correct to call you Mr. Staller or  
18 should I be calling you something different?

19 A. Mr. Staller works.

20 Q. Mr. Staller, do you recognize this  
21 document?

22 A. Yes, I do.

23 Q. Is this the CV that you provided in this  
24 case?

25 A. It is.

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2 Q. Does this document reflect your  
3 qualifications to provide expert testimony in  
4 this matter?

5 A. Yes.

6 Q. Are there any other qualifications that  
7 you have that pertain to your qualification in  
8 this matter that are not contained within this  
9 document?

10 A. No.

11 Q. Did you prepare an expert report in this  
12 matter, sir?

13 A. Yes.

14 Q. Did anyone besides you author the expert  
15 report?

16 A. My report is cosigned by my colleague,  
17 fellow senior economist, Stephen Dripps. Stephen  
18 is spelled with a P-H and Dripps is spelled  
19 D-R-I-P-P-S.

20 Q. Do you know whether Mr. Dripps will be  
21 presented as a testifying expert in this matter?

22 A. I imagine, God willing, I will be the  
23 testifying expert.

24 Q. As far as you know, as of today,  
25 Mr. Dripps has no intention to testify?

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2 A. True.

3 Q. Was there a particular portion of the  
4 expert report that was prepared by Mr. Dripps?

5 A. Not a specific portion as a secondary  
6 economist and co-signator. His role was in the  
7 reviewing process. After the report was written,  
8 review it for grammatical -- you know, typing  
9 errors potentially. And then review my summary  
10 of the spreadsheets that I prepared with regard  
11 to the available jobs for Ms. Fischman and then  
12 if the conclusions are consistent with what  
13 Mr. Dripps and I discussed throughout the  
14 development of my report, he's happy to co-sign  
15 the report.

16 Q. Okay. So the substance of the report is  
17 all derived from you, correct?

18 A. That's true, yes.

19 Q. So turning to your accreditation section  
20 of your CV on the left panel --

21 A. Mr. Berman, the substance is coming from  
22 various sources but the drafting -- the  
23 preparation is coming from the --

24 Q. You're the drafter of the report,  
25 correct?

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2 A. Yes.

3 Q. And Mr. Dripps reviewed your drafts?

4 A. Yes.

5 Q. Mr. Dripps did not draft any portion of  
6 the report, did he?

7 A. Only in the editing capacity.

8 Q. Thank you for clarifying.

9 With respect to your accreditations on the  
10 left-hand panel, are you a certified valuation  
11 analyst?

12 A. Yes.

13 Q. Did you use any skills as a certified  
14 analyst in preparation of the report?

15 A. No.

16 Q. Are you a certified instructor for  
17 National Institute of Trial Advocacy?

18 A. Yes.

19 Q. Did you use any of your skills and  
20 training as a certified instructor for the  
21 National Institute of Trial Advocacy in  
22 preparation of this report?

23 A. No.

24 Q. Turning to your education beneath that.  
25 Do you see that portion where it's labeled

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2 education?

3 A. Yes.

4 Q. Are you a Master of Accountancy from  
5 Villanova?

6 A. I received a Master's of Accountancy  
7 from Villanova, yes.

8 Q. Did you use any of your Master of  
9 Accountancy knowledge in preparation of the  
10 report?

11 A. Within my Masters's program, there was  
12 Master's levels labor economic classes. To the  
13 extent that that background and training applied  
14 to my specific examination in this case, my  
15 training from that degree would have been used in  
16 my drafting of the current report.

17 Q. You have an MBA from Temple University?

18 A. Yes.

19 Q. Did you use any of your MBA skills in  
20 preparation of this report?

21 A. Yes.

22 Q. Which ones?

23 A. Throughout the course of my MBA program  
24 which concentrated on economics, I took Master  
25 level economic classes, including several labor

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2 economic classes. Based upon my training in that  
3 program in labor economics, the extent I was  
4 providing economic conclusions in this report of  
5 the labor market that existed for Ms. Fischman,  
6 that would relate to my background and training  
7 that derived from that program.

8 Q. And you have a law degree from Temple  
9 University's James E. Beasley School of Law?

10 A. Yes.

11 Q. Did you use any of that training in  
12 preparation of this report?

13 A. Yes.

14 Q. Which training did you use from the  
15 Beasley School of Law in the preparation of this  
16 report?

17 A. Through that training I had the  
18 opportunity to sit for and pass three different  
19 state bar examinations. So I'm a member of three  
20 bars in good standing. As a licensed attorney,  
21 my background and training explicitly from Temple  
22 University would relate to employment law,  
23 background and information, employment law,  
24 formal training in law school, that would have  
25 given me some context in understanding of the

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2 claims being made by Ms. Fischman, the relevance  
3 of my analysis and the scope of my analysis  
4 that's presented in my report in this matter.

5 Q. What states are you licensed in?

6 A. New Jersey, the Commonwealth of  
7 Pennsylvania and Maryland.

8 Q. Do you have to be licensed in New Jersey  
9 to practice law in that state?

10 A. To my understanding, yes.

11 Q. Do you have to be licensed in  
12 Pennsylvania to practice law in that state?

13 A. I believe so, yes.

14 Q. Do you have to be licensed to practice  
15 law in Maryland in order to practice law in that  
16 state?

17 A. Yes, with the exception of a pro hac  
18 vice admission to any of those states.

19 Q. Turning to your awards and honor section  
20 of your CV. Do any of these awards and honors  
21 have any bearing on the substance of the report  
22 you prepared in this matter?

23 THE WITNESS: Madam court reporter, can  
24 you scroll down. I can't see that part of  
25 the CV.

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2 A. I would say, yes, to the extent that  
3 those awards are provided based upon my work in  
4 the field as a forensic economist, I'm providing  
5 forensic economic analysis in this matter. It  
6 goes towards my experience in the industry and  
7 the specific field.

8 Q. Are you currently employed?

9 A. Yes.

10 Q. Where are you presently employed?

11 A. I guess the where would be in  
12 Philadelphia. The whom would be the Center for  
13 Forensic Economic Studies.

14 Q. Can we refer to that today by the  
15 acronym CFES?

16 A. CFES would be fine.

17 Q. What business is CFES in?

18 A. Our primary practice is concentrated on  
19 the evaluation of economic damages related to  
20 various types of lawsuits primarily in the field  
21 of employment discrimination, personal injury and  
22 wrongful death and commercial disputes.

23 Q. How many economists does CFES have?

24 A. In addition to myself, we have six  
25 additional economists.

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2 Q. So you mentioned yourself and  
3 Mr. Dripps, right?

4 A. Yes.

5 Q. Who are the other four?

6 A. That would be Brian Conley, Adam Gilham,  
7 David Adams and Bernard Lex.

8 Q. So in connection with this matter, what  
9 area is your expertise lying in?

10 A. Through the information I have to the  
11 current date, labor economics.

12 Q. Any other areas of expertise that are  
13 being applied to this matter?

14 A. I have not seen a report -- an economist  
15 report prepared on behalf of Ms. Fischman. To  
16 the extent such a report is prepared that may  
17 outline backpay and front pay damages, I may be  
18 requested to opine on those damages. But through  
19 the information I have through the current date,  
20 it would be limited to labor economics.

21 Q. I think you mentioned earlier, correct  
22 me if I'm wrong, that you're a forensic  
23 economist?

24 A. Yes.

25 Q. Are you applying any forensic economics

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2 to the report you prepared in this matter?

3 A. As I explained many times in courtrooms,  
4 the term "forensic" in economics can become  
5 confusing or misleading. The term "forensic"  
6 simply means public forum. It comes from the  
7 Latin word "forensis," so simply forensic  
8 economics just means the application of economic  
9 theory, research and thought into the public  
10 forum, which as we all know to be the courthouse.

11 So I guess the broad work I do is forensic  
12 economics as my economics analysis is applied  
13 into legal matters that may get into the public  
14 forum at the courthouse.

15 Q. For the purpose of the report that you  
16 prepared, do you claim any expertise other than  
17 in the field of labor economics?

18 A. No.

19 Q. How long have you been providing labor  
20 economics expertise commercially?

21 A. Sixteen plus years.

22 Q. Do you know how many matters you have  
23 been retained as an expert in over those past  
24 sixteen years in connection with labor and  
25 economics?

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2 A. Was your question labor and economics or  
3 labor economics?

4 Q. Labor economics. How many cases have  
5 you been retained as an expert on labor economics  
6 over the past 16 years, if you know?

7 A. I can approximate -- as an  
8 approximation, around thousand times.

9 Q. In all of those cases, were you working  
10 pursuant to a retainer agreement?

11 A. I just couldn't -- in all those cases,  
12 was I working under a retainer agreement?

13 Q. Yes.

14 A. I imagine so. Our office's typical  
15 practice is to be formally retained and we have a  
16 retainer agreement or the client may provide a  
17 retainer agreement. So I would say in most of  
18 those cases.

19 Q. In the cases you just described, were  
20 they all through CFES?

21 A. Yes.

22 Q. Were any of them provided on a pro bono  
23 basis?

24 A. Not to my recollection.

25 Q. It your understanding that CFES was

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2 compensated or worked for compensation in each of  
3 those matters?

4 A. That's a compound question. Can you  
5 just split it up?

6 Q. Is it your understanding that in the  
7 matters that you testified in labor economics  
8 over the past year, CFES was compensated for the  
9 work?

10 A. Over the past year, yes -- I imagine so.  
11 I don't know about our collection process but I  
12 imagine -- over the last year, I don't recall a  
13 pro bono matter in a labor economic case.

14 Q. So you don't perform this work for free,  
15 correct?

16 A. No, our firm is for a profit business.

17 Q. In any of these labor economics cases  
18 where you were initially hired as an expert, did  
19 you ultimately decide you were unable to provide  
20 testimony?

21 A. If it got to drafting a report and I  
22 felt comfortable to and willing to provide  
23 testimony as needed -- so I imagine it got to a  
24 point where I reviewed materials that I felt  
25 comfortable drafting a report and with the

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2 qualification the state or are jurisdiction  
3 required a report, I felt comfortable doing that  
4 and I felt comfortable providing testimony in  
5 courthouse.

6 Q. Were there any labor economic  
7 engagements that you accepted that you ultimately  
8 were uncomfortable providing a report in?

9 A. No.

10 Q. Are you being compensated for your work  
11 in this matter?

12 A. Yes.

13 Q. Are you compensated on an hourly rate?

14 A. The firm is, yes.

15 Q. What is the hourly rate that the firm is  
16 compensated at for your work?

17 A. 335 an hour for report writing and  
18 analysis. Testimony is billed at a half day rate  
19 of 2,500 for deposition testimony or trial  
20 testimony.

21 Q. Do you know Mr. Dripps' rate?

22 A. 335 an hour. Same trial or testimony  
23 rates, 2,500 for a half day.

24 Q. Do you know how many hours you put into  
25 this matter so far?

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2 A. I do not.

3 Q. You have prepared expert reports in a  
4 number of cases, correct?

5 A. Yes.

6 Q. Approximately how many of those were  
7 Federal cases?

8 A. In my overall practice I, had over 1,000  
9 since 2005.

10 Q. Are you familiar with the Federal rules  
11 of procedure covering disclosure of expert  
12 testimony?

13 A. I'm familiar with Rule 26. I don't have  
14 it committed to memory but generally familiar.

15 Q. Are you aware that Rule 26 requires  
16 statement of the compensation to be paid for the  
17 study and testimony in the case by the expert?

18 A. Yes.

19 Q. Have you provided that here?

20 A. As far as my hourly rate, yes. As far  
21 as a statement of compensation, at the time of  
22 preparing my report it wasn't totaled so I  
23 couldn't provide a total billing to date.

24 Q. Did you provide any information  
25 concerning the amount that you were being

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2 compensate in your expert report?

3 A. I believe so, yes.

4 MS. BERMAN: Toni, you can put the

5 exhibit away for a moment.

6 Toni, can you pull up in the exhibits  
7 that you've been provided there's a document  
8 called CFES report Fischman 11-13-20.PDF.

9 Let's mark this as Staller Exhibit 2.

10 (Staller Exhibit 2, marked for  
11 identification.)

12 Q. Mr. Staller, do you see this document?

13 A. Yes.

14 Q. Do you see at bottom it says page 1 out  
15 of 608?

16 A. No, it only goes to the top -- the first  
17 page right now on the screen.

18 Q. On the screen --

19 A. I'm sorry, I do see that. Yes.

20 Q. Did you prepare 608 page expert report  
21 in this matter?

22 A. With appendices, yes. So yes.

23 MR. BERMAN: Toni, can you allow the  
24 witness to flip through the document to his  
25 satisfaction and let me know when he's

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2 ready.

3 A. Yes, this is my report with the relevant  
4 attachment relevant to Ms. Fischman.

5 Q. Can you please can you turn to page nine  
6 of the document. Mr. Staller, did I hear you say  
7 you recognize this document?

8 A. Yes.

9 Q. And it's your expert report in this  
10 matter, correct?

11 A. Yes.

12 Q. Do you see the last line on the summary  
13 there where it says, All relevant documents as  
14 required by F.R.C.P.26(a)(2)(B) are attached  
15 hereto as Appendix A"?

16 A. Yes.

17 Q. Is there an Appendix A in this document?

18 A. Scroll down. Unfortunately, my  
19 assistant didn't include it before the  
20 attachment. So that would be -- the CV we just  
21 discussed -- the testimony list that I saw that  
22 you do have and then the fee schedule that we  
23 just discussed a couple moments ago, that's my  
24 typical Appendix A.

25 MR. BERMAN: I don't think we received a

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2 fee schedule. I'll just call for production  
3 of the fee schedule to the extent it hasn't  
4 been previously provided.

5 We can set that issue aside.

6 Q. Is it correct to characterize the first  
7 nine pages of this report as the body of the  
8 report; is that fair?

9 A. Yes.

10 Q. What I would like to do is just turn to  
11 the front of the report, the very first page.

12 Do you see the section that says "documents  
13 relied upon"?

14 A. Yes.

15 Q. Does this contain a complete and  
16 accurate list of materials that you were provided  
17 in this matter?

18 A. So, I can't say provided. These are the  
19 documents I used to formulate my opinions and  
20 conclusions. Relied upon -- I'm sorry,  
21 provided -- I believe that's additional documents  
22 provided.

23 Q. Okay. But these are -- this is a  
24 complete list of documents that you relied upon  
25 in preparing this report, correct?

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2 A. Yes, that's true.

3 Q. If it's not on this list you didn't rely  
4 upon it?

5 A. You'll see that there are some  
6 additional documents used that are cited  
7 throughout the report. But as far as fact  
8 specific documents related to this particular  
9 matter, these would be the case specific material  
10 and then throughout the report you'll see  
11 references to the forensic job sets and some  
12 other economic data that's cited within my  
13 report. But as far as case specific, it's in  
14 Section I.

15 Q. Is it fair to say that if it's  
16 referenced expressly in your report, you may have  
17 relied upon?

18 A. Correct, either through Section I or  
19 relevant footnotes.

20 Q. In contrast, is it fair to say that if  
21 it's not referenced in your report, you didn't  
22 rely upon?

23 MS. PRIMAVERA: Objection to form. You  
24 can answer.

25 A. Correct, to form my opinions in this

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2 matter. Yes.

3 Q. Thank you. Were you provided with any  
4 additional documents that you determined -- you  
5 decided not to rely upon?

6 A. Let's see. I'm taking a look to see  
7 what else I have in my file.

8 The only documents that I received that  
9 is not in Section I would be the expert report of  
10 Rona Wexler, R-O-N-A W-E-X-L-E-R.

11 Q. When did you receive the expert report  
12 of Rona Wexler?

13 A. The first part of your question got  
14 muffled.

15 Q. When did you receive the expert report  
16 of Rona Wexler?

17 A. October of 2020.

18 Q. So it's your understanding that Ms.  
19 Wexler had already drafted an expert report as of  
20 October of 2020?

21 MS. PRIMAVERA: Objection to form.

22 Q. You were provided with -- you were  
23 provided with Ms. Wexler's report in October of  
24 2020, did I get that right?

25 A. Yes.

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2 Q. Was that a draft report?

3 A. (No verbal response.)

4 Q. Can you hear me?

5 A. Yes, I'm just looking.

6 Q. Okay.

7 A. Yes.

8 Q. Did you subsequently receive any other  
9 reports from Rona Wexler?

10 A. I don't see a final version in my  
11 system.

12 Q. The report that you provided to us in  
13 this matter is your final report, correct?

14 A. Yes.

15 Q. Was there any drafts?

16 A. I don't have any, no.

17 Q. Did you prepare any drafts of your  
18 report before getting to the final version?

19 A. The only version I have is my  
20 November 13th report. So as far as drafts, I  
21 don't have any saved. As far as the preparation  
22 of it, I don't recall.

23 Q. Did you provide any drafts of your  
24 report to anyone prior to issuing your final  
25 report in this matter?

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2 A. I don't know because the only version I  
3 have is the current version and I don't have  
4 anything that has a prior date stamp.

5 Q. Can you tell me when you first began  
6 drafting your expert report in this matter?

7 A. No, I have to go back to look at the  
8 billing records.

9 Q. Do you know when you were retained in  
10 this matter?

11 A. When I was what?

12 Q. Retained?

13 A. There's a retention agreement. I have  
14 to go back look at retention agreement.

15 Q. Do you know when you were assigned to  
16 work on this matter?

17 A. No.

18 Q. Did you receive the draft of Ms.  
19 Wexler's report before you began drafting your  
20 report?

21 A. I have to go back and look at my billing  
22 records.

23 Q. Did you provide Ms. Wexler with any  
24 drafts of your report?

25 A. I don't believe so -- no.

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2 Q. Prior to providing your November 13,  
3 2020 report, did you provide any drafts to your  
4 counsel or your client's counsel?

5 A. I don't recall.

6 Q. Did you receive any feedback from the  
7 attorneys that hired CFES concerning drafts of  
8 your expert report?

9 MS. PRIMAVERA: Objection. You can  
10 answer.

11 A. I don't recall.

12 Q. What were you asked to do in this case?

13 MS. PRIMAVERA: Objection.

14 Q. What was the scope of work you were  
15 asked to perform in this case?

16 A. Based upon Ms. Fischman's separation  
17 from employment with the defendant, evaluate the  
18 labor market that existed subsequent to her  
19 separation and identify relevant and potential  
20 employment opportunities that Ms. Fischman could  
21 have pursued and compare that to the documented  
22 and provided information of her efforts to find  
23 subsequent employment post her separation.

24 MR. BERMAN: Toni, can you read back the  
25 last part of that response where he said

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2 "and compare that to."

3 (Whereupon, requested portion of

4 testimony read back.)

5 Q. Were you asked to make any assumptions  
6 in the preparation of your report?

7 MS. PRIMAVERA: Objection.

8 A. No.

9 Q. Did you make any assumptions in the  
10 preparation of your report?

11 A. I don't think I did, no.

12 Q. Is serving as an expert witness a  
13 material part of your work for CFES?

14 MS. PRIMAVERA: Objection.

15 Q. You can answer.

16 A. So I'm confused by the question of the  
17 term "material" and I'm confused with how you're  
18 using it as an expert witness. So can you  
19 restate the question, please.

20 Q. Sure. What portion of your work for  
21 CFES involves serving as an expert?

22 A. When you're using the term "serving as  
23 an expert," is that testifying or just being  
24 retained as an expert that would draft a report  
25 and provide analysis?

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2 Q. The second of those two choices.

3 A. Okay. I would approximate 65 to  
4 75 percent of my time would be serving as an  
5 expert for my time with CFES, which would be  
6 defined as working with clients and developing  
7 economic models.

8 Q. Is that is that work you just described  
9 in connection with litigation?

10 A. That approximation percentage would be,  
11 yes.

12 Q. So of the remaining portion of your  
13 work, what is that comprised of?

14 A. Non-litigation work and then some  
15 administrative duties. I serve as the firm's  
16 president.

17 Q. Okay. So what proportion of your work  
18 is spent doing administrative duties?

19 A. That would vary whether we're in a  
20 pandemic or not. About 10 -- 10 to 15 percent of  
21 the time.

22 Q. Okay. What proportion of your work  
23 involves non-litigation duties?

24 A. So if we take 20 percent -- if I take  
25 the upper end of my approximation of litigation

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2 time it was 70 percent and then I add 10 percent  
3 for administrative duties, the balance would be  
4 20 percent for non-litigation projects.

5 Q. What types of work make up your  
6 non-litigation projects?

7 A. Business valuations, cost benefit  
8 studies and union negotiations.

9 Q. Do you charge different rates for these  
10 different types of work you perform?

11 A. Typically, most of those projects are  
12 also billed at 335 an hour.

13 Q. Is working for CFES your full-time  
14 occupation?

15 A. Yes.

16 Q. Have you created billing records which  
17 correspond to all of the work that you performed  
18 in this matter to date?

19 A. With the exception of preparing for  
20 today's deposition and the deposition itself.  
21 Other than that, yes.

22 Q. All right. So other than --

23 MS. BERMAN: Withdrawn.

24 Q. Do you recall earlier I asked you about  
25 the scope of work for this assignment?

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2 A. Yes.

3 Q. Okay. So did I understand you correctly  
4 that there were three components of the scope of  
5 work -- and I'm just paraphrasing here --  
6 evaluating the labor market after Ms. Fischman's  
7 separation, that would be number one.

8 Number two, identifying relevant and  
9 potential employment opportunities.

10 Number three, would be comparing those  
11 potential employment opportunities to documented  
12 and provided information concerning Ms.  
13 Fischman's efforts to find post separation  
14 employment; did I get that right?

15 A. Generally, yes.

16 Q. Were you asked to perform any other work  
17 besides those three things that we just  
18 identified?

19 MS. PRIMAVERA: Objection.

20 Q. You can answer the question.

21 A. So, just for the record, I wasn't asked  
22 to do those three sections. I was asked to  
23 provide an economic analysis of the labor market  
24 and then develop my findings based upon the  
25 review of the records I had provided in this

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2 case. So I just don't want the record to suggest  
3 I was told what to do or to reach certain  
4 conclusions. But here is the case, here is the  
5 materials and can you provide an economic  
6 analysis based upon that information.

7 Q. What were you asked to provide an  
8 economic analysis of?

9 A. The labor market for lawyers, examine  
10 her -- her being Ms. Fischman's job search  
11 efforts subsequent to her separation -- compare  
12 that to relevant economic labor and economic  
13 information with regard to how the marketplace  
14 looked for people similar to Ms. Fischman in  
15 February of '17 and thereafter and see how her  
16 efforts to find mitigating employment compared to  
17 available jobs and the labor market.

18 Q. Okay. In connection with providing the  
19 economic analysis you described, is that type of  
20 economic analysis something that you have done  
21 before?

22 A. Yes.

23 Q. How many times have you done that  
24 before?

25 A. Similar to the analysis that I provided

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2 in this matter?

3 Q. Yes.

4 A. I would approximate of the roughly 1,000  
5 we already discussed in the labor economic arena,  
6 maybe half of those are similar to the analysis  
7 that I provided here.

8 Q. Do I understand correctly you've done  
9 approximately 500 analyses of this type?

10 A. By approximation, yes.

11 Q. Do each of those analyses look at the  
12 same types of information that you just  
13 described?

14 MS. PRIMAVERA: Objection.

15 A. No, that's a -- that's a generally  
16 overbroad question. Each case is going to be  
17 specific on it's own. I'm going to look at the  
18 relevant materials in a specific case and then  
19 pull relevant economic data to the task at hand.

20 Q. How many of your previous assignments  
21 have involved examining the job search efforts of  
22 the plaintiff?

23 A. Of those approximate 1,000 that we  
24 already discussed, in that 500 ballpark -- again,  
25 that's a loose approximation. I never really

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2 tallied it up.

3 Q. I just want to make sure I understand.

4 Are you -- do I understand correctly that you

5 you've done approximately 500 analyses of job

6 search efforts of a plaintiff?

7 A. If we're trying to go off of

8 approximations -- so earlier in our conversation

9 today we discussed that about roughly I've done

10 1,000 or so labor market or labor economic

11 studies -- those would be of various

12 examinations. Within that 1,000 population --

13 which is still an approximation -- because now

14 your more refined question is going towards how

15 many are looking at the job search efforts of the

16 plaintiff?

17 Q. Yes.

18 A. I couldn't give you -- I mean, in that

19 500 ballpark -- I'm hesitant to put that on the

20 record because I don't want to be guessing. I

21 don't know. I don't really tally -- after each

22 report, I don't have a little check sheet. I

23 don't know.

24 Q. Is it fair to say you looked at the job

25 search efforts of a plaintiff hundreds of times.

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2 A. Sure. North, greater than 100. I can  
3 definitely say that, yes.

4 Q. Greater than 300?

5 A. I just don't want to misstate the record  
6 so I can't tell you.

7 Q. Is there any way you would be able to  
8 determine that information by resorting to your  
9 records?

10 A. No, my database isn't kept by that type  
11 of granular information. It's much broader  
12 because my records I don't personally -- I don't  
13 have a preference of what type of analysis I do.  
14 I do what's requested in a specific case.

15 Q. Okay. Working with that same universe  
16 of matters we just described -- you know, not  
17 holding to you any specific number -- but you  
18 said it's certainly more than 100. It could be  
19 significantly higher than that; is that fair?

20 A. Right, it could be in the range of 100  
21 to a 1,000.

22 Q. Well, I thought you said the most it can  
23 be 500ish, did I get that wrong?

24 MS. PRIMAVERA: Objection.

25 A. So the universe we're talking about now

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2 in labor economics matter that I can give an  
3 approximation to of preparing an analysis on  
4 would be 1,000. I'm comfortable testifying on  
5 the record that it be north of 100. I got  
6 hesitant and I wanted to clarify that I can't say  
7 anywhere between 500 so I can say it's between  
8 100 to 1,000 and that's what I can testify to  
9 under other.

10 Q. How many of those matters concern a job  
11 search efforts of someone other than a plaintiff?

12 A. Someone other than a plaintiff?

13 Q. Yes.

14 A. None.

15 Q. How many of those analyses did you pair  
16 that with labor economics information of the type  
17 you described previously?

18 A. I imagine a majority of them.

19 Q. How many of those did you -- did your  
20 pairing of job --

21 MS. BERMAN: Withdrawn.

22 Q. How many of those labor economics  
23 studies did you consider the marketplace for  
24 people similar to the plaintiff in your matter?

25 A. I imagine a majority of them. I don't

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2 have a firm statistic or percentage.

3 Q. How many of those assignments did you  
4 make an assessment of the reasonableness of the  
5 person's job search efforts?

6 A. I imagine a majority of them. I don't  
7 know.

8 Q. How many of those matters did you make  
9 an assessment of how long you would have expected  
10 it to take for that person to find a comparable  
11 position?

12 A. I imagine a majority of those reports.

13 Q. Okay. This covers a 16 year period; is  
14 that correct?

15 A. I'm not sure what you're referring to  
16 now.

17 Q. Well, of those 1,000 or so labor  
18 economic matters you just described, does that  
19 cover a 16 year period?

20 A. Yes.

21 Q. Has your pace of working on these  
22 assignments changed over time?

23 A. Yes.

24 Q. So within approximately the past year,  
25 how many of these have you done?

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2 A. Ballpark, 20 to 30.

3 Q. Over the past year do you know how much  
4 revenue your firm has derived from your labor  
5 economics services?

6 MS. PRIMAVERA: Objection.

7 A. No, I don't.

8 Q. Are you compensated on an hourly basis?

9 A. No.

10 Q. Are you salaried?

11 A. Yes.

12 Q. Do you receive any increase in your  
13 compensation based upon the revenue that you  
14 generate during the course of the year?

15 A. No.

16 Q. Turning to your report, can you please  
17 identify for me any opinions that it contains?

18 MR. BERMAN: By the way, it's 12:10.

19 Let me know if anyone wants a break. I just  
20 want to put that out there.

21 THE WITNESS: Let me answer this  
22 question and I'll do a quick bathroom break.

23 A. Opinions that I have in this matter as  
24 contained within my report would be that Ms.  
25 Fischman's documented job search activities based

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2 upon the materials provided to me were  
3 predominately consisted of online employment  
4 applications. Her job search activities tended  
5 to be bunched together on a particular day and  
6 then there would be gaps in between her next  
7 search activity.

8 An additional opinion would be based  
9 upon the New York Department of Labor with regard  
10 to the efforts of a job seeker. That a job  
11 seeker under the New York Department of Labor  
12 standards must perform three work search  
13 activities per week. That as of the time of my  
14 report, that we would have expected to maintain  
15 that minimum standard that Ms. Fischman would  
16 have done 594 job search activities. That based  
17 upon the documents provided in discovery, I  
18 totaled or tallied only 106 job search activities  
19 for Ms. Fischman. That an individual seeking  
20 work after separation, the goal or the time  
21 effort that should be set forth by that job  
22 seeker should become a full-time job. So the  
23 information indicates that a job seeker should be  
24 spending 25 to 40 hours per week looking for  
25 re-employment. That based upon her job search,

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2 that Ms. Fischman tended almost exclusively to  
3 use Linked-In as a source of job contacts. It  
4 did not appear that she used online job  
5 databases, headhunters, leveraging her prior  
6 economic institutions, career placement  
7 departments.

8 And based -- in totally based upon the  
9 standards set forth by the State of New York,  
10 based upon her demonstrative efforts that her job  
11 search efforts fell far short of being reasonable  
12 an diligent.

13 The next layer of my opinion then goes  
14 towards a more specific search. Other opinions  
15 would relate to the average duration of  
16 unemployment for lawyers and people similar to  
17 Ms. Fischman based upon gender, age and general  
18 occupation. That based upon certain criteria we  
19 would have expected Ms. Fischman to have found  
20 re-employment within a period of rounding 10  
21 weeks up to 37 weeks with an overwhelming  
22 majority having found that within that time  
23 period.

24 And then survey specific job  
25 opportunities in my opinion relate to a number of

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2 opportunities that existed for Ms. Fischman based  
3 upon a dataset acquired for lawyers from the  
4 period of February 1st, 2017 through April 6,  
5 2020, in the New York Metro area, which would  
6 include Newark, New Jersey and Jersey City. That  
7 there were 6,409 job opportunities to be examined  
8 by Ms. Fischman. And then when we start to  
9 control or remove for certain specific employment  
10 types -- you see on page seven my opinion would  
11 be that of the most relevant would be 551  
12 employment opportunities.

13 When you compare, again, the specific  
14 job employment opportunities per search effort,  
15 combined with the standard set forth by the New  
16 York Department of Labor, which is similar to  
17 most states I've seen within the United States,  
18 Ms. Fischman's efforts to find subsequent  
19 employment were not reasonable, not sustained and  
20 diligent when blended with broad economic data of  
21 the marketplace and specific data to lawyers in  
22 the New York Metro area.

23 Q. Have you completed your response?

24 A. Let me review my report to make sure I  
25 captured all of my opinions.

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2 Also, at this time and as I discuss in  
3 my report, so for a complete record here and  
4 contained within the four corners of my report,  
5 that should Ms. Fischman prevail on her claim of  
6 wrongful termination based upon her human  
7 capital, her experience, I would not see as an  
8 economist -- or a labor economist standpoint any  
9 permanent diminution or lifetime loss of earnings  
10 for Ms. Fischman.

11 Q. Have you completed your response?

12 A. Just for the record, in sum, based upon  
13 totally of information I had in this matter from  
14 Ms. Fischman, as well as labor market statistics  
15 an job opportunities acquired specific to Ms.  
16 Fischman and her vocation, Ms. Fischman did not  
17 conduct a reasonable or diligent job search and  
18 did not perform a reasonable effort to mitigate  
19 her efforts.

20 That would be the totality of my  
21 opinions.

22 Q. Is it fair to say the last one you just  
23 described was a summary of the previous ones?

24 A. Correct, yes, those were the dillying up  
25 to the finale.

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2 Q. I'm cognisant of your request to take a  
3 break, I just want to -- I possibly missed a  
4 portion of your area and I want to make sure I  
5 got it.

6 You said that after removing and controlling  
7 for certain jobs, 551 remained, correct?

8 A. As you see on my table on page seven,  
9 correct, the pole starts out at 6,409 and then as  
10 you see -- depending again when you remove  
11 certain titles or qualifications within the  
12 dataset you're left with 551 after removal of all  
13 those qualifications.

14 However, based upon Ms. Fischman's  
15 resume, her training and experience, I don't  
16 think she's limited to the 551. I just wanted to  
17 put on a filter of how we would examine the labor  
18 market of specific opportunities that existed  
19 from February 1, 2017 through April of 2020.

20 Q. I got it. And you mentioned two other  
21 opinions plus your summary after that. I just  
22 want to make sure I got the gist of them at a  
23 high level and then after the break we'll go  
24 through them.

25 The opinion after that -- I'm not sure I got

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2 it -- you said something about how her efforts  
3 weren't reasonable, sustained and diligent; did I  
4 get the gist of that one?

5 A. Yes.

6 Q. And there was one after that said no  
7 loss of earnings, did I get the gist of that one?

8 A. No, lifetime loss of earnings.

9 Q. Lifetime, okay. And the one after that  
10 was the summary -- the totality of your findings,  
11 right?

12 A. I believe so, yes.

13 MR. BURMAN: Let's take a break now.  
14 What time is it? It's 12:20. We'll take a  
15 break now and then we will take a break when  
16 we get to lunchtime.

17 And if you have a preferred time to  
18 break for lunch, please let me know.

19 MR. FORTINSKY: How long, five minutes?

20 MS. BERMAN: Five minutes.

21 (Whereupon, a brief recess was taken.)

22 Q. Mr. Staller, turn to page three of the  
23 report. I will direct your attention to section  
24 three of your report where it says, "Job search  
25 activities" do you see where I'm referring you

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2 to?

3 A. Yes.

4 Q. The first line of text here under the  
5 section says, "Subsequent to her separation from  
6 her employment with Mitsubishi, Ms. Fischman  
7 sought employment in a similar capacity -- and  
8 there's a footnote there. Do you see that?

9 A. Yes.

10 Q. So your footnote is referencing  
11 documents produced by Ms. Fischman in case  
12 describing her job search, correct?

13 A. I don't know if the documents are  
14 describing it but I think it summarizes it.

15 Q. Based on those documents did you  
16 conclude Ms. Fischman sought employment in a  
17 similar capacity?

18 A. Through those documents for a period of  
19 time, yes.

20 Q. And then there's a table under that that  
21 says "Table A: Fischman documented job search  
22 activities." Do you see that table?

23 A. Table A, yes.

24 Q. Is that table similarly based upon the  
25 documents referenced in footnote 12, Fischman

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2 000001 through 303?

3 A. Yes.

4 Q. Does this table breakdown documented job  
5 search activities by Ms. Fischman in each month  
6 of each year from 2017 through 2018?

7 A. Through May of 2018, yes.

8 Q. The first entry on that chart is for  
9 February of 2017, right?

10 A. The first entry is February of 2017.

11 Q. We agree, right?

12 A. I do.

13 Q. And you identified 17 documented job  
14 search activities for Ms. Fischman during that  
15 period of time, correct?

16 A. Yes, but I think one was on January  
17 30th -- you'll see that footnote, 14. But 16  
18 were in the month of February, yes.

19 Q. With respect to the footnote you just  
20 identified, footnote 14, that footnote states it  
21 includes -- the table includes one effort from  
22 January 30, 2017; is that correct?

23 A. Yes.

24 Q. Now, is there any significance to the  
25 date January 30, 2017?

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2 A. I believe that's the date she separated  
3 with Mitsubishi.

4 Q. Do we agree that on the very day she was  
5 separated from Mitsubishi, she engaged in a job  
6 search effort?

7 A. True.

8 Q. Thank you. Looking down below the  
9 table, do you see that paragraph says, "Based on  
10 the data above, Ms. Fischman made a total of 106  
11 job search activities between January 30th of  
12 2017 and May 6, 2018, approximately 1.61 job  
13 search efforts per week." Do you see that  
14 section?

15 A. Yes.

16 Q. Is that just math?

17 MS. PRIMAVERA: Objection.

18 A. It is.

19 Q. That's how you got to number, right, you  
20 took the number of job search efforts and  
21 averaged it over the period of time, correct?

22 A. It's taking the total reported  
23 activities that are summarized in Fischman 1  
24 through 303, and then dividing that by the number  
25 of weeks, correct. Then you arrive at 1.61

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2 activities per week.

3 Q. So that's based on a monthly average for  
4 each of those months identified from  
5 February 2017 through May of 2018; is that  
6 correct?

7 A. So 1.61 represents a weekly average.

8 Q. A weekly average, okay.

9 But it was taken over -- that's the average  
10 per week over the period from February 2017  
11 through May of 2018, right?

12 A. Yes.

13 Q. And then the next sentence there says,  
14 "Assuming an ongoing search from January 30, 2017  
15 to the current date, Ms. Fischman averaged 0.54  
16 job search activities per week." Do you see that  
17 sentence?

18 A. Yes.

19 Q. Are how did you calculate -- what period  
20 of time is that average calculated over?

21 A. Through February of 2017 through  
22 October 23rd of 2020.

23 Q. So to arrive at this figure, did you  
24 take the total of 106 jobs and average it over  
25 the period you just described?

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2 A. Did I -- correct, so I received no  
3 additional document after May of 2018. So it's  
4 taking the same 106 contacts and then dividing it  
5 through more weeks, a longer period of time.

6 Q. What's the significance of averaging it  
7 out over a longer period of time when there were  
8 no job search efforts in that period of time?

9 A. My understanding of the law, Ms.  
10 Fischman had a continuing duty to mitigate. To  
11 my understanding, she's -- at some point in time  
12 became a real estate agent or working with her  
13 mother's real estate firm doing real estate  
14 transactions.

15 However, her duty to continue to find  
16 comparable employment continues even after taking  
17 the time to get into the real estate business so  
18 that duty continues and persists through the  
19 present date so that just demonstrates -- this  
20 adequately represents the continued efforts or  
21 lack thereof of Ms. Fischman to find comparable  
22 legal positions.

23 Q. So is your legal opinion a foundational  
24 item for taking this average?

25 MS. PRIMAVERA: Objection.

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2 A. So I'm not offering a legal opinion.  
3 I'm sure the Court will instruct the jury on the  
4 law. I'm going based upon my background and  
5 training and experience in the law as well as the  
6 forensic economics. As it relates to the  
7 presentation of my analysis, my understanding of  
8 the law in Federal courts in New York would be  
9 that there's a continuing duty to mitigate and to  
10 that extent I will explain to the jury where I  
11 arrive at the 1.61 and the .55.

12 Q. But you're not offering expert legal  
13 testimony, correct?

14 MS. PRIMAVERA: Objection.

15 A. True, I am not.

16 Q. So it's not your intention to testify as  
17 to what the law is at trial, is it?

18 A. My intention is not to testify to the  
19 law at trial. I can't predict all the cross  
20 examination questions. So I will answer those  
21 questions as I deem fit and accurately and  
22 appropriately. But as far as why I got -- throw  
23 in the .55, that's a the basis for throwing in  
24 the .55.

25 Q. Is your understanding of the law of

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2 mitigation current?

3 MR. FORTINSKY: I'm sorry, I didn't hear  
4 the last part.

5 MR. BERMAN: Can you read it back,  
6 please.

7 (Whereupon, last question read back.)

8 A. I haven't done a recent -- when I say  
9 "recent," I'm talking the last 30, 60 days case  
10 law search. But as far as current, we would go  
11 back prior to that, that's as of the spring of  
12 2021. That's my understanding of the law.

13 Q. During the course of your duties at CFES  
14 do you perform legal research?

15 A. I will from time to time as a forensic  
16 economist. As we discussed earlier, the context  
17 of the word forensic and the word economics. My  
18 economic analysis is being applied into the  
19 public forum of the courthouse. To that extent  
20 that my economic analysis must conform to the law  
21 of this specific jurisdiction, my analysis -- my  
22 research would be related to my analysis to make  
23 sure it comports to the relevant laws of specific  
24 jurisdiction.

25 Q. Did you make take any steps to ensure

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2 that your expert analysis here conforms to the  
3 law of the jurisdiction where this case is filed?

4 A. When I was preparing my report in  
5 November of '20, yes, based upon the Second  
6 Circuit laws, yes.

7 Q. Is it there a particular --

8 MR. BERMAN: I'll rephrase.

9 Q. Was there any particular subject matter  
10 that you kept abreast of as of that November of  
11 2020 timeframe you just identified?

12 A. The subject matter would be through  
13 mitigation efforts of a plaintiff and an  
14 appointment matter pending in the Second Circuit.

15 Q. What about subject matter related to the  
16 permissible scope of expert testimony?

17 A. I can't -- it seems too vague of a  
18 question for me to answer.

19 Q. Well, you're a trained attorney,  
20 correct?

21 A. Yes.

22 Q. And I think you testified that you  
23 perform legal research concerning the application  
24 of your economic analysis so that it conforms to  
25 the law of the specific jurisdiction, did I get

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2 that right?

3 A. Yes.

4 Q. Okay. So the legal research that you  
5 perform include the permissible scope of your  
6 ability to testify as an expert.

7 A. You're asking me or telling me?

8 Q. I'm asking you if it includes that  
9 subject matter?

10 A. I have done that research in general  
11 terms, yes.

12 Q. Did you do that research up through that  
13 period that you just described, which was  
14 November of 2020?

15 A. Yes.

16 Q. So is it fair to say that as of that  
17 time in November of 2020, you were informed  
18 concerning the permissible scope of your  
19 testimony in this jurisdiction?

20 A. So, again, I think "permissible" is not  
21 a proper legal conclusion. I think the Court  
22 will indicate what's permissible. I'm generally  
23 familiar with what courts allow with regard to my  
24 testimony in the field of labor economics and  
25 employment discrimination matters.

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2 Q. Thank you. Have you ever been employed  
3 as a professional recruiter?

4 A. No.

5 Q. Are you a vocational expert?

6 A. No.

7 Q. Are you industrial psychologist?

8 A. No.

9 Q. Are you organizational psychologist?

10 A. No.

11 Q. Are you an industrial organizational  
12 psychologist?

13 A. No.

14 Q. Are you a professor?

15 A. Yes.

16 Q. What are you a professor of?

17 A. Economics.

18 Q. Where are you professor, sir?

19 A. Temple University.

20 Q. What kind of appointments do you have at  
21 Temple University?

22 A. Adjunct faculty member at the Beasley  
23 School of Law.

24 Q. How long have you been in that capacity?

25 A. Thirteen years.

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2 Q. Are you published?

3 A. Yes.

4 Q. What literature are you published in?

5 A. Various journals as fully set forth  
6 within my curriculum vitae.

7 Q. All your publications are in your CV?

8 A. Yes.

9 Q. Are there any publications that you have  
10 contributed to that are not listed in your CV?

11 A. No.

12 Q. Have you held any other professorships?

13 A. I lectured at other institutions but not  
14 sat on their faculty.

15 Q. Where have you lectured?

16 A. Villanova School of Law, Drexel School  
17 of Law, the University of Baltimore School of Law  
18 and the University of Pennsylvania.

19 Q. Was that the University of Pennsylvania  
20 or was it a particular school thereof?

21 A. It was within their arts and science  
22 department.

23 Q. What was the subject matter of your  
24 lectures at Villanova Law?

25 A. Villanova Law was the civil litigation

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2 class that related to working with experts, what  
3 experts -- the role of experts in civil  
4 litigation, the different between liability and  
5 damages experts and the roles of reach.

6 Q. What was the nature of your lectures at  
7 Drexel?

8 A. Drexel would be on the same topic some  
9 of the times. Other times it dealt with  
10 deposition practice, the students are within  
11 their trial advocacy class and then they have a  
12 deposition section and I would work with the  
13 students on deposing experts and then we run  
14 through a vignette and let them depose me for a  
15 while.

16 Q. What were the subject matter of your  
17 lectures -- I believe you said it was the  
18 University of Baltimore.

19 A. Baltimore would be similar to that of  
20 Villanova, working with experts and some  
21 litigation, what civil litigation looks like  
22 outside of your tort textbook.

23 Q. Have you completed your response?

24 A. Yes.

25 Q. What was the subject at of your lectures

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2 at the University of Pennsylvania School of Arts  
3 and Sciences?

4 A. That dealt with labor economics, survey  
5 of what economists -- this is several years  
6 ago -- I believe it was a survey of economic  
7 issues in the labor market. That also talked  
8 about what economists may do as forensic  
9 economists.

10 Q. With respect to your lectures at  
11 Villanova Law, did those concern economics?

12 A. Yes.

13 Q. What aspect of economics did the  
14 Villanova lectures encompass?

15 A. Present value, marginal loss analysis,  
16 human capital models.

17 Q. Did any of those lectures -- did any of  
18 those lectures relate to the subject matter of  
19 evaluating the labor market after the separation  
20 of employment for an individual?

21 A. My lectures would discuss that at my  
22 employment at Temple.

23 Q. So that's a not included in what you did  
24 at Villanova, is it?

25 A. I don't -- I don't recall that being

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2 discussed at Temple.

3 Q. I'm asking you about Villanova.

4 A. Sorry. Villanova?

5 Q. Yes.

6 A. I don't recall that being discussed at  
7 Villanova.

8 Q. Did your Villanova lectures cover  
9 potential employment opportunities and  
10 identifying those relevant opportunities?

11 A. At Villanova?

12 Q. Yes.

13 A. I don't recall.

14 Q. Did your work at Villanova involve  
15 pairing labor and economics data with job search  
16 efforts?

17 A. I don't recall.

18 Q. What about at Drexel?

19 A. At Drexel -- I believe I discussed that,  
20 yes.

21 Q. With what about at the University of  
22 Baltimore?

23 A. No, I don't believe so at the University  
24 of Baltimore.

25 Q. What about at the University of

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2 Pennsylvania?

3 A. Labor economic issues I lectured on  
4 there. I don't know if pairing the two  
5 together -- I don't recall that but I know it was  
6 the topic of labor economics.

7 Q. Are you familiar with the Journal of  
8 Applied Psychology?

9 A. No.

10 Q. Are you familiar with the Journal of  
11 Business in Psychology?

12 A. No.

13 Q. Do you use either of those two journals  
14 in the course of your professional duties at  
15 CFES?

16 A. No, I'm not aware of them.

17 Q. Have you won any awards for research?

18 A. To the extent that the awards that I  
19 received that are identified on my CV are related  
20 to specific matters and my work in specific  
21 matters, those matters all require research. So  
22 I would say, yes, to your question.

23 Q. None of the awards were directly as a  
24 result of research performed or on the basis of  
25 research performed, correct?

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2 A. Right. So if your question is saying  
3 was an award directly tied to one specific type  
4 of research, true, my awards were not for one  
5 micro or specific type of research.

6 Q. And you don't have any award-winning  
7 research, do you?

8 A. Collectively I would say, yes. But,  
9 again, as far as one specific investigation or  
10 one specific topic, no.

11 Q. When you say "collectively," what are  
12 you referring to?

13 A. The awards that are identified on page  
14 one of my curriculum vitae being recognized --  
15 unfortunately several years ago as I get older --  
16 for the "Top 40 under 40" for my work as a  
17 forensic economist. My work as a forensic  
18 economist relates to doing research in a specific  
19 case, developing economic loss models and then  
20 either testifying to those conclusions or  
21 drafting reports to those conclusions.

22 Likewise, having received the best of  
23 award through The Legal Intelligencer for best  
24 economist from the years 2010 through 2021 -- it  
25 says 2018 on my CV -- I have to update that.

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2 Same answer, that's being derived and awarded for  
3 my work and research on specific matter.

4 Q. Do any of those awards relate to  
5 comparing the job search efforts of a terminated  
6 individual to available employment opportunities?

7 A. Again, to the extent that my work as a  
8 labor economist in my field of forensic  
9 economics, yes.

10 Q. What do you mean by that? Do you  
11 receive an award for comparing job search efforts  
12 of a separated employee to their available  
13 opportunities for employment?

14 MS. PRIMAVERA: Objection.

15 A. So it would be my same answer to your  
16 same question. It would be -- again, from a  
17 collective process as a forensic economist, a  
18 portion of my work -- we discussed now that  
19 roughly 1,000 matters that I've worked on are  
20 related to labor economic issues. Some portion  
21 between greater than 100 or up to 1,000 are  
22 related to the application of a job search  
23 efforts of a specific plaintiff compared to  
24 relative labor market data. To the extent that a  
25 portion of my work there was recognized and I was

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2 awarded for that work as either a Top 40 Under 40  
3 through the organization, NACVA or recognized  
4 through Legal Intelligencer's Best Of survey for  
5 my work in my field as a forensic economist,  
6 which again a good portion is labor economics, a  
7 good portion is the application of the labor  
8 market compared to a specific person's job search  
9 efforts, I've been recognized for that work.

10 On an individual basis for one specific  
11 research project, no.

12 Q. Thank you. Have you received any  
13 specific awards connected to research in the  
14 field of job searching?

15 A. I'm not aware if search award exists.

16 Q. Have you received any awards  
17 specifically tied to efforts to compare the  
18 similarity of jobs?

19 A. I've never seen such award existing on  
20 that topic.

21 Q. Have you done work developing selection  
22 procedure for jobs?

23 A. I don't understand the question.

24 Q. Have you done any work related to the  
25 process for selecting candidates for employment?

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2 A. To the extent as our firm's president  
3 and I've hired and terminated individuals, the  
4 answer would be yes.

5 Q. Other than in your position as the  
6 president of an organization that conducts its  
7 own hiring, have you done any other work  
8 developing selection procedures for selecting job  
9 candidates?

10 A. No.

11 Q. Have you done any work concerning the  
12 validation of selection procedures for hiring  
13 candidates?

14 A. It would be the same answer with regard  
15 to operating and hiring and firing for CFES since  
16 2008.

17 Q. Have you received any training  
18 concerning the comparison of one job to another  
19 job?

20 A. So I can't answer yes or no to that.  
21 That's, obviously, a broad question. Can you  
22 refine the question.

23 Q. Are you familiar with the field of  
24 industrial organizational psychology?

25 A. I'm aware of it as a field.

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2 Q. Do you know what general subject matter  
3 of that field pertains to?

4 A. Psychological issues related to the  
5 operation of the firm.

6 Q. Do you know whether industrial  
7 organizational psychologists regularly use the  
8 science of job analysis?

9 A. I don't know.

10 Q. Are you familiar with the science of job  
11 analysis?

12 A. How are you defining the term?

13 Q. I'm defining the term the way it's used  
14 within the field of industrial organizational  
15 psychology.

16 A. I can't say yes or no because I don't  
17 know how they're defining the term.

18 Q. So you're not familiar with the science  
19 of job analysis as it's performed by those in the  
20 field of industrial organizational psychology,  
21 correct?

22 MS. PRIMAVERA: Objection to form.  
23 Mischaracterizes the testimony.

24 Q. You can answer the question.

25 A. I don't know because I don't know how

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2 they're defining it. Unless you want to provide  
3 me the definition, I can answer the question.

4 Q. It's fair to say you're not familiar  
5 with the definition of job analysis as practiced  
6 by industrial organizational psychologists,  
7 correct?

8 A. Not off the top of my head, correct.

9 Q. Okay. Do you know whether the science  
10 of industrial organizational psychology is used  
11 for a wide array of activities, including  
12 generating job descriptions?

13 A. I don't know.

14 Q. Do you know whether acute principle from  
15 a scientific standpoint in building such systems  
16 is that they accurately reflect the job?

17 A. I'm not familiar with how you're using  
18 the word "they" in your question.

19 Q. I'm referring to industrial  
20 organizational psychologists.

21 A. Can you restate the question.

22 MR. BERMAN: Can you please read back  
23 the question, Toni.

24 (Whereupon, last question read back.)

25 A. I don't understand your question. Can

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2 you rephrase it, please.

3 MR. BERMAN: Toni, can you read it one  
4 more time.

5 (Whereupon, last question read back.)

6 Q. Do you know that there's a science used  
7 in connection with generating job descriptions?

8 A. I don't know.

9 Q. Do you know anything about that science?

10 A. To the extent there is a science being  
11 applied in a specific job or every job, I don't  
12 know. But if there is science, I'm not aware of  
13 that science.

14 Q. Are you aware of any science concerning  
15 the creation of hiring and promotion assessments?

16 A. Is your question now the science of  
17 hiring and promotion assessments?

18 Q. Creating hiring and promotion  
19 assessments, correct.

20 A. So that's compound. Can we break it  
21 down?

22 Q. Sure. Are you aware of the science of  
23 creating hiring assessments?

24 A. I'm aware within hiring practices of  
25 various assessments maybe employed to vet various

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2 candidates. I don't know how you're using the  
3 term "science" -- if it's used in a different  
4 way. But I can -- as far as the question is  
5 worded, that's my answer.

6 Q. Are you aware that there's a science  
7 that is connected to the creation of those  
8 assessments?

9 A. I can't say on the record that every  
10 employer uses science in creating assessments.  
11 To the extend that some employers sometime may  
12 use a scientific assessment, that's a possible.

13 Q. Do you recognize that there is a science  
14 that can be applied to the creation of hiring  
15 assessments?

16 A. I don't know.

17 Q. Do you know anything about the science  
18 of creating promotion assessments?

19 MR. FORTINSKY: I am just going to  
20 object to form to all these questions about  
21 the sign of. I don't really get what that  
22 means.

23 MS. BERMAN: This witness is presented  
24 as an expert witness on topics involving the  
25 comparison of jobs. I'm asking him what he

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2 knows about that science.

3 MR. FORTINSKY: Well, I don't  
4 understand -- biology is a science, it's the  
5 study of life; astronomy is a science, it's  
6 the study of outer space; chemistry is a  
7 science -- I don't understand what it means  
8 when you say, you know, the science of job  
9 whatever.

10 I mean, what's that the study? I just  
11 don't get this whole line of questions  
12 about --

13 MS. BERMAN: I noted your objection for  
14 the record. Let's move on without the  
15 coaching of the witness, okay?

16 MR. FORTINSKY: Sure.

17 Q. Sir, do you know anything about any of  
18 the subdisciplines contained within the field of  
19 industrial organizational psychology?

20 A. It depends on -- if you identify the  
21 sub -- I can tell you whether I'm aware of  
22 information. I don't know about --

23 Q. Those subfields would include generating  
24 job descriptions, are you familiar with that  
25 subfield of industrial organizational psychology?

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2 A. Am I familiar with it?

3 Q. Yes.

4 A. Not as a labor economist. When you use  
5 the term "familiarity," I have familiarity.

6 Q. So you're not an expert in any of the  
7 subfields of industrial organizational  
8 psychology, correct?

9 MS. PRIMAVERA: Objection.

10 A. True, I'm not an industrial  
11 psychologist. That's correct.

12 Q. Do you have any specialized training  
13 concerning establishing the similarity between  
14 two jobs?

15 A. So overly broad and vague, your  
16 question. As it relates to Ms. Fischman, the  
17 answer would be, yes, based upon the fact that,  
18 again, I've been a licensed attorney since 2001,  
19 licensed in three states. In this specific  
20 matter, Ms. Fischman was a licensed attorney that  
21 had a legal position within the defendant. So as  
22 job similarity would go, in this particular  
23 matter, yes, I have training and experience.

24 So your overall question will depend on  
25 the industry and the type of employment a person

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2 had and the nature of employment and the job  
3 duties a person has. But in this particular  
4 case, yes.

5 Q. Wouldn't the expertise you just  
6 described the same as any other attorney would  
7 have in identifying and comparing attorney jobs?

8 MS. PRIMAVERA: Objection. Can you  
9 repeat that question back, please.

10 (Whereupon, the last question read  
11 back.)

12 MS. PRIMAVERA: Objection.

13 A. So this whole line of questioning I'm  
14 bit confused, Mr. Berman, because you spent some  
15 time going into the concept of comparing and job  
16 hiring practices with whatever science there may  
17 be for promotion or science you may suggest with  
18 request to hiring, promotions, job postings.

19 As explicitly stated in my report and  
20 what I've testified to earlier, my role here was  
21 to identify opportunities that existed for Ms.  
22 Fischman to pursue within the legal field. My  
23 role is here is not to compare her job at  
24 Mitsubishi to any of those 6,409 opportunities  
25 identified --

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2 Q. Was --

3 A. -- I'm not done with my answer. I  
4 thought one of your rules was not to talk over  
5 each other.

6 Q. Sorry. Have you completed your  
7 response?

8 A. No, I didn't.

9 Q. Please continue.

10 A. I'm happy to continue answering any  
11 questions you have.

12 Just so the record is clear, and what  
13 the scope of my testimony is today and at the  
14 time of trial is, my goal was to look at the  
15 opportunities that existed in the New York Metro  
16 area for a licensed attorney, similar to Ms.  
17 Fischman, based upon her years of experience in  
18 the legal market, based upon her experience at  
19 Mitsubishi and identify those opportunities she  
20 could have pursued.

21 As far as obtainment of those positions,  
22 we'll never know because she didn't apply. We  
23 know she made 106 contacts over roughly a two  
24 year period. So that's what I'm looking at, the  
25 fruits of her efforts compared to the dynamic

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2 market that existed for an attorney similar to  
3 Ms. Fischman.

4 Any questions you have with regards to  
5 the receipt of a specific job or comparing one  
6 job to the other, my goal here is not to compare  
7 job "A" to job "B" but to identify opportunities  
8 she could have applied to, interviewed and then  
9 she could have determined whether she was a good  
10 fit for that job or that employer will make that  
11 determination. Those events did not happen.

12 Q. Have you complete your response?

13 A. I have.

14 Q. Wasn't it part of your job to determine  
15 whether the opportunities identified were  
16 suitable for Ms. Fischman?

17 A. Correct. Suitable in the sense based  
18 upon her resume, described work, within her prior  
19 job description within Mitsubishi and her work  
20 experience and then what the market looked like  
21 based upon what Ms. Fischman had done previously  
22 as identified to the marketplace she's done  
23 previously as identified on her resume.

24 Q. Let me drill down on that. Didn't you  
25 say you looked at Department of Labor statistics

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2 concerning a specific MSA?

3 A. Right. The metropolitan area, yes.

4 Q. Metropolitan statistical area, correct?

5 A. Yes.

6 Q. Doesn't that data derive from US Census?

7 A. It does, yes.

8 Q. Do you know how often that data is

9 updated?

10 A. Which data? US Census has a lot of

11 data.

12 Q. Do you know how often the US Census

13 takes place?

14 A. Well, a full census is every 10 years

15 and then they have more updates throughout that

16 10 year period.

17 Q. Do you know how often those updates take

18 place?

19 A. So they're going to ask different

20 questions over different time period. Your

21 question has to be refined.

22 Q. The metropolitan statistical area that

23 you included contained jobs from New Jersey,

24 correct?

25 A. It does, yes.

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2 Q. Is Ms. Fischman licensed to practice law  
3 in New Jersey?

4 A. I have to go back to her resume.

5 Q. We can do that right now if you would  
6 like. Do you have access to her resume?

7 A. Yes, I'm looking at it now.

8 Q. I will direct you to page three of her  
9 resume.

10 MR. BERMAN: Can you pull it up, Toni,  
11 it was previously marked as plaintiff's  
12 Exhibit 6.

13 THE WITNESS: I think it's on page  
14 three.

15 MR. BERMAN: It should be on the bottom  
16 of page three.

17 And let the record reflect the witness  
18 is being shown an exhibit previously marked  
19 as plaintiff's Exhibit 3 (sic) and  
20 specifically his attention is being directed  
21 to page marked Def000722.

22 A. It appears -- to answer your question, I  
23 believe the question pending is what bar  
24 admissions Ms. Fischman had, correct?

25 Q. Well, yes, you know what bar admissions

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2 she has, right?

3 A. It appears, as she represented on her  
4 resume, California State license and then the  
5 Federal Court appears, Central District of  
6 California.

7 Q. Is Ms. Fischman licensed to practice law  
8 in New Jersey?

9 A. Not as of the time of this resume.

10 Q. Right. So would jobs in New Jersey for  
11 an attorney be suitable for Ms. Fischman giving  
12 her licensing?

13 MS. PRIMAVERA: Objection.

14 A. Yes. For the same reason that her  
15 Mitsubishi employment was in New York and she  
16 didn't have a New York license or Federal  
17 license. To the extent that she would be using  
18 her legal skills for a national -- international  
19 company like Mitsubishi that they be a resident  
20 or have an office in New Jersey, that would be  
21 applicable. To the extent that many attorneys  
22 over years have applied for and received  
23 additional bar licenses, such as myself, it's a  
24 very feasible idea. So the mere fact of a lack  
25 of a state admission is not dispositive on any

1 C. Staller - Confidential

2 issue or any ability for her to apply or seek  
3 again an opportunity in New Jersey. These are  
4 opportunities she could have pursued.

5 Q. Sir, are you aware that the detail of  
6 the job posting that you included in your expert  
7 report specifically require licensing in certain  
8 states?

9 A. Some of the opportunities do. And I'm  
10 sure you're well aware, Mr. Berman, the whole  
11 idea is creating opportunities that while some of  
12 those opportunities may suggest a specific state  
13 licensure, once they met Ms. Fischman and saw the  
14 breath of her experience and training, then they  
15 will be interested in purring suing conversations  
16 with her. So, again, these were opportunities  
17 that could have been pursued.

18 Q. Are you suggesting, sir, that an  
19 employer who specifically requires in their job  
20 posting a New Jersey license that that employment  
21 is still suitable for Ms. Fischman who is not  
22 licensed in New Jersey?

23 MS. PRIMAVERA: Objection.

24 A. What I'm suggesting is, one, you haven't  
25 shown me a specific ad. If you want to point one

1 C. Staller - Confidential

2 out we can discuss it. Some ads may require  
3 certain state licensure or suggest certain state  
4 licensure. However, as we all know, what we call  
5 in economics and hiring practices a thin down  
6 market, these are opportunities that one would  
7 explore to see if there's a fit. Given Ms.  
8 Fischman's over 20 years experience in the law,  
9 if she was a good fit for the company. Otherwise  
10 state licensure, and that can be acquired through  
11 a quick either application process or studying  
12 for the bar, that would not be dispositive on the  
13 issue not to apply for the jobs based upon her  
14 credentials and potential job opportunity.

15 Q. So it's your testimony that you know  
16 better than the employer what qualifications are  
17 required for the positions listed?

18 MS. PRIMAVERA: Objection. You don't  
19 have to answer that question.

20 Q. You can answer the question unless the  
21 attorney instructs you not to answer the  
22 question.

23 MS. PRIMAVERA: Can you rephrase it. It  
24 didn't sound like an actual question.

25 Can you read that back.

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2 (Whereupon, last question read back.)

3 MS. PRIMAVERA: Same objection and  
4 request for Mr. Berman to restate that  
5 question.

6 Q. Is it your testimony, Mr. Staller, that  
7 where an employer specifically lists in their job  
8 posting the requirement for a New Jersey license,  
9 that that position is still somehow suitable for  
10 Ms. Fischman to apply to?

11 A. Given the totality in my experience in  
12 the law, which now goes over 20 years, and the  
13 hiring practice of lawyers, yes, the mere -- I'm  
14 not saying I know better -- I'm saying that's an  
15 appropriate opportunity, all other criteria set  
16 by Ms. Fischman for a potential opportunity is  
17 worth her persuing in her continuing duty to  
18 mitigate her damages following her separation  
19 from Mitsubishi --

20 Q. If --

21 A. If you want to cut me off, we're going  
22 to be here all day, Mr. Berman.

23 Q. I thought you were finished.

24 A. So with regard to her ongoing duty to  
25 mitigate, these are opportunities that would

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2 exist for her to explore. Would she get every  
3 job, no, but would these be appropriate based  
4 upon the criteria set forth in my search  
5 parameter, her resume, these would be appropriate  
6 search opportunities for her to explore.

7 Q. If the employer lists the requirement,  
8 then what scientific or expert basis are you  
9 using to counter in the employer's description of  
10 the job?

11 MS. PRIMAVERA: Objection.

12 Q. What facts are you relying upon to show  
13 that an employer who requires or states a  
14 requirement for a New Jersey license will  
15 actually hire someone without that license?

16 A. That's not a barrier to entry. Licenses  
17 are obtainable. She can either -- based upon her  
18 experience -- depending on the rules of  
19 reciprocity with her California license, fill out  
20 the relevant paperwork or she could sit for the  
21 bar like many practicing attorneys do if all  
22 other criteria of the job was a perfect match for  
23 Ms. Fischman.

24 Q. You listed jobs here --

25 MS. PRIMAVERA: Mr. Berman -- Mr.

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2 Staller, are you finished with your  
3 response?

4 THE WITNESS: I wasn't, no.

5 MS. PRIMAVERA: Let's do one at time,  
6 please.

7 Mr. Staller, can you continue or do you  
8 want the court reporter to read back what  
9 you said so far.

10 THE WITNESS: Can you read back the  
11 question, I can finish my answer.

12 (Whereupon, last question read back.)

13 A. To continue with my answer now on the  
14 record, that would be an appropriate opportunity  
15 for Ms. Fischman to have sought.

16 Q. Have you completed your response?

17 A. Yes, I have.

18 Q. Can you please turn to page 512 of the  
19 expert report. So we are looking at a sample job  
20 listing that you included in your analysis,  
21 right?

22 A. We're looking at one specific one right  
23 now. You said page 512?

24 Q. Yes. I just picked one out to look at  
25 as an example. There are hundreds of them,

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2 right?

3 A. Hundreds of postings. I don't know --  
4 there's hundreds of postings.

5 Q. Okay. So then, for example, this one  
6 here says license requirement. Do you see in the  
7 fourth line of the content description?

8 A. Yes.

9 Q. It says, "Reviewers on this matter must  
10 be licensed and in good standing with the State  
11 of New York," right?

12 A. This was does say that, yes.

13 Q. Is Ms. Fischman licensed within the  
14 State of New York?

15 A. Not as of the date of -- the resume we  
16 were looking at earlier.

17 Q. In considering what opportunities were  
18 suitable for Ms. Fischman, did you include  
19 opportunities that she was not licensed to work  
20 for?

21 A. It includes certain opportunities that  
22 do have state licensure that at the time Ms.  
23 Fischman appears she might not have had.

24 Q. And you mentioned that in your view it  
25 was a possibility for her to get bar reciprocity,

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2 correct?

3 A. So I will -- this job was posted in  
4 December of 2019. I believe she separated in  
5 January of 2017. To the extent she wanted to  
6 take the bar for the State of New York or any  
7 other states to continue her obligation to  
8 mitigate her damages, she could have done so.  
9 But my opinion is also, yes, that this would be  
10 an appropriate opportunity to have reached  
11 contact out to.

12 MR. BERMAN: I object to the  
13 nonresponsive portion of your answer.  
14 That's not what I asked you.

15 Toni, can you read back the question.

16 (Whereupon, last question read back.)

17 A. In a general concept, yes.

18 Q. Do you have any factual basis for  
19 considering whether Ms. Fischman was eligible for  
20 bar reciprocity with the State of New York?

21 A. At what point in time?

22 Q. Any point in time.

23 A. Again, that's a super vague question.

24 You have to look at standard of a specific

25 clientele.

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2 Q. Are you suggesting that the standard for  
3 bar reciprocity between California and New York  
4 has changed during the relevant period of time?

5 A. I haven't looked into it so I can't say  
6 yes or no.

7 Q. The same question with respect to  
8 reciprocity between California and New Jersey,  
9 have you looked into that?

10 A. Again, your question doesn't -- at a  
11 certain point in time?

12 Q. At any point in time, have you looked  
13 into the looked into the requirements for  
14 eligibility for reciprocity between the State of  
15 California and the State of New Jersey?

16 A. No.

17 Q. Do you know how often the State of New  
18 York offers the bar exam?

19 A. As of 2021 -- again, you're not  
20 referencing your question to any period of time.

21 Q. At the time of Ms. Fischman's separate  
22 from Mitsubishi, do you know how often the State  
23 of New York offered the bar exam?

24 A. As of 2017, I believe twice a year.

25 Q. So do you know what the earliest point

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2 that Ms. Fischman could have satisfied the  
3 requirement for a New York State bar licensing  
4 was?

5 A. February of '17 I imagine she could have  
6 sat for the bar. I don't know the lead time but  
7 I believe there's a bar in February and a bar in  
8 July.

9 Q. Your licensed in three states as an  
10 attorney, correct?

11 A. That's true.

12 Q. How many of those jurisdictions did you  
13 sit for a bar examination?

14 A. Three.

15 Q. How long did -- which was the first of  
16 those three?

17 A. State of Maryland.

18 Q. Did you study for the bar for the State  
19 of Maryland?

20 A. I did.

21 Q. How long did you study for?

22 A. I guess six weeks. You finish law  
23 school in June and you take it in July.

24 Q. So can we agree there wasn't a six week  
25 period of time between Ms. Fischman's termination

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2 from Mitsubishi and the February bar exam?

3 A. True.

4 Q. And do we agree there's an additional  
5 period of time after the bar exam is administered  
6 before an attorney is actually licensed by being  
7 admitted to the bar?

8 A. Generally, yes.

9 Q. The second bar exam that you took, did  
10 you study for that bar exam?

11 A. It was the following days of the  
12 Maryland bar so it would be the same answer.

13 Q. So six weeks to study?

14 A. More or less. It was contemporaneous  
15 with the State of Maryland.

16 Q. With respect to the third bar exam you  
17 took, did you study for that one?

18 A. A little bit.

19 Q. What's a little bit?

20 A. I was a practicing attorney so at night  
21 after working all day and taking care of any  
22 other obligations, I cracked back open the MDR  
23 book -- or whatever books they were -- I forget  
24 the acronym -- but the state books.

25 Q. Is it fair to say that sitting for the

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2 bar exam requires a significant degree of  
3 studying?

4 A. So I can't agree with your qualification  
5 of significant. It requires study. And, again,  
6 you know Ms. Fischman being a licensed attorney  
7 has experience in the law, has a leg up on the  
8 students who never practiced up.

9 Q. Let's ask a different question. I asked  
10 you before what the earliest date that Ms.  
11 Fischman's --

12 MS. BERMAN: Withdrawn.

13 Q. I asked you before whether you included  
14 any --

15 MS. BERMAN: Withdrawn.

16 Q. When was the first date that Ms.  
17 Fischman could have satisfied the requirements  
18 for admission to the New York Bar and actually  
19 been admitted?

20 A. Any time since she started practicing  
21 for Mitsubishi in New York. From March of 2008  
22 she could have -- at any point in time she could  
23 have sat for the bar and taken the bar exam.

24 Q. Let he me ask the question differently  
25 then.

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2 When is the first point in time after Ms.  
3 Fischman was terminated from Mitsubishi when she  
4 could have been admitted to the New York Bar?

5 A. Assuming no reciprocity and that it  
6 would require the full sitting for the bar --  
7 which I'm not sure it does. But to answer your  
8 question, if one sits for the bar, I imagine she  
9 would have likely had to take the July of 2017  
10 bar and would have been admitted in the fall of  
11 '17.

12 Q. Isn't it correct that you included job  
13 opportunities requiring New York State licensing  
14 from before that period of time when she could  
15 have been admitted to the New York Bar after  
16 being terminated from Mitsubishi?

17 A. Yes.

18 Q. And didn't you do the same with respect  
19 to the State of New Jersey?

20 A. Yes. Because I do not view the  
21 licensure requirement as a limitation to her  
22 seeking opportunities that would otherwise -- her  
23 ability and the needs of the employer.

24 Q. Your view is based upon your opinion,  
25 correct?

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2 MS. PRIMAVERA: Objection.

3 A. True.

4 Q. That's based upon your opinion as a  
5 labor economist, is that right?

6 A. My opinion based upon my experience as a  
7 labor economist, a lawyer for 20 years knowing  
8 that the requirement of a bar licensure would not  
9 prevent a candidate, otherwise more qualified,  
10 from seeking employment from a specific employer.  
11 That is if the employer finds the right match,  
12 there are workarounds for the licensure issue,  
13 such as we just discussed here, taking the bar.

14 Q. You're not testifying as an expert  
15 lawyer, correct?

16 A. I'm not -- well, I'm not giving a legal  
17 opinion -- I'm not being retained to offer a  
18 legal opinion. I'm being offered to offer my  
19 opinions with regard to the labor market for a  
20 lawyer, Ms. Fischman, and that's calling upon my  
21 experience as a labor economist and a lawyer for  
22 over 20 years. I don't know if I can parse the  
23 two out. I'm not being called to talk about the  
24 legal obligations but the problematic obligations  
25 as a license attorney who has experience since

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2 1996.

3 Q. You've been a licensed attorney for  
4 20 years, right?

5 A. Yes.

6 Q. In your 20 years have you hired other  
7 attorneys?

8 A. I have, yes.

9 Q. In your 20 years have you ever even once  
10 hired an attorney who wasn't licensed in your  
11 state?

12 A. Yes.

13 Q. What were circumstances surrounding that  
14 decision?

15 A. That the attorney that was hired for the  
16 project that was going forward -- even in our  
17 state didn't need to have the state license.

18 Q. So that was in a state where that work  
19 wasn't required to be work licensed?

20 A. No, the projects that this person was  
21 being hired for didn't require -- they're a  
22 licensed attorney but they weren't filing papers  
23 on behalf of third-parties in that specific state  
24 so they weren't, I guess, representing or doing  
25 legal pleadings in that state.

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2 Q. So they weren't practicing law in that  
3 state, correct?

4 A. For that project, correct.

5 Q. Have you ever hired a lawyer to practice  
6 law in your state who wasn't licensed in your  
7 state?

8 A. One of the firms I worked at before  
9 joining my current employer did, yes. And then  
10 those individuals sat for bar or seek  
11 reciprocity.

12 Q. Again, that wasn't what I asked you but  
13 okay.

14 MR. BERMAN: It's 1:37, would you like  
15 to take a lunch break now?

16 MS. PRIMAVERA: How much longer do you  
17 have around?

18 MR. BERMAN: I'm going to keep going. I  
19 don't know how long it will take. We have  
20 him for four hours is my understanding.

21 MS. PRIMAVERA: It's up to you, Mr.  
22 Staller.

23 THE WITNESS: Let's take a 10 minute  
24 break and then we'll continue.

25 MR. FORTINSKY: Let's come back at 2:00

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2 to keep it even.

3 (Whereupon, a luncheon recess was  
4 taken.)

5 Q. Can you pull up the expert report and  
6 turn to page four.

7 Mr. Staller, I am directing you to page four  
8 of your expert report. Is it fair to say in this  
9 section of the report you identify what you  
10 consider to be the elements of a reasonable and  
11 diligent job search?

12 A. What I identify and the State of New  
13 York identify.

14 Q. Along those lines, in the second  
15 sentence of the first paragraph you put in your  
16 report the following statement, "To continue to  
17 receive unemployment benefits in New York, the  
18 unemployment recipient must, at a minimum,  
19 perform three work search activities per week."

20 Do you see that statement?

21 A. Yes.

22 Q. Do you know whether Ms. Fischman applied  
23 for unemployment benefits?

24 A. I don't know if I ever saw her tax  
25 returns. I don't think I ever saw her tax

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2 returns.

3 Q. I didn't ask you about her tax returns.  
4 I asked you whether you know if she applied for  
5 unemployment benefits?

6 A. The receipt of unemployment benefits if  
7 she did receive them would be identified on her  
8 tax returns so that would be a source for me as  
9 an economist to verify receipt of such benefits.  
10 The application without seeing her tax returns, I  
11 don't know.

12 Q. Aren't there other documents that would  
13 reflect whether she received unemployment  
14 benefits or applied for unemployment benefits  
15 other than tax returns?

16 A. You could have shared her bank  
17 statements. If she did get it, there would be  
18 direct deposits. There are other financial  
19 sources from Ms. Fischman that you could have  
20 provided that would allow me to verify that.

21 Q. Sitting here today do you know whether  
22 Ms. Fischman applied for unemployment benefits?

23 A. I don't know.

24 Q. Do you know whether she received  
25 unemployment benefits?

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2 A. Based on your last question and my last  
3 answer, obviously, I don't know.

4 Q. Thank you. And you've been an attorney  
5 for 20 years you said, correct?

6 A. True.

7 Q. Did you litigate cases?

8 A. Yes.

9 Q. Did you conduct discovery?

10 A. Yes.

11 Q. In discovery did you call for production  
12 of tax returns?

13 A. Depending on the claim.

14 Q. Do you know whether generally speaking  
15 tax returns are discoverable?

16 A. Generally -- well, again, it's  
17 depending -- it's a very broad question because  
18 from the employment cases that I worked on, yes,  
19 they were discoverable.

20 Q. Do you know what the rule is concerning  
21 the discoverability of tax returns?

22 A. What the rule is?

23 Q. Yes. Do you know what the rule is?

24 A. I currently don't know what the rule in  
25 the Second Circuit is on the production of tax

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2 returns.

3 Q. Turning to third paragraph on this page.

4 Do you see where it says, "According to recent

5 articles for an individual who is not working a

6 reasonable target for the amount of time to spend

7 when searching for a full-time job is anywhere

8 from 25 to 40 hours per week."

9 Do you see that statement?

10 A. Yes.

11 Q. What forms the basis for that statement?

12 A. Footnote 20.

13 Q. So you're referring to the two citations

14 in footnote 20?

15 A. Yes.

16 Q. Is there any other basis for the

17 statement other than the sources cited in

18 footnote 20?

19 A. I've had conversations -- not in this

20 particular matter with Ms. Wexler -- but over the

21 years I've spoken with Ms. Wexler in other

22 employment matters and she's reiterated that

23 concept that from an employability standpoint

24 similar to what's identified in those articles

25 that the work of the employee or separated

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2 individual is to find work. So that's -- I've  
3 had that conversation with Ms. Wexler.

4 On the US Department of Labor website  
5 over the years there's been a discussion on  
6 efforts of job seekers that's been identified  
7 similar to those figures on the US Department of  
8 Labor website.

9 Q. Any other sources that support your  
10 contention 25 to 40 hours a week is a reasonable  
11 target for the amount of time for person who is  
12 not working to search for a full-time job?

13 A. It would be what we just discussed and  
14 then I've had other conversations with other  
15 employability professionals over the years that  
16 offer the same findings.

17 Q. Are you aware of any other articles that  
18 support that contention?

19 A. Articles would be then -- the only one  
20 would be this US Department of Labor handbook  
21 they have -- it actually used to be posted on the  
22 New York Department of Labor website. I don't  
23 know if it currently is.

24 Q. Are you relying upon those materials in  
25 support of this contention?

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2 A. Not outside of footnote -- well, it just  
3 corroborates -- you asked for all the information  
4 I had supporting that statement. So to answer  
5 that question, the primary sources would be  
6 footnote 20 as well as the additional information  
7 I just provided.

8 Q. As an expert, your understanding is  
9 you're supposed to present the information that  
10 you're relying upon within your written report,  
11 correct?

12 A. True.

13 Q. So is there anything in this written  
14 report other than information in footnote 20 that  
15 you're relying upon in support of this opinion?

16 A. No. Again, your question was "any other  
17 sources." So additional sources, which we would  
18 reiterate the same findings as properly cited on  
19 footnote 20, would be my conversation with Ms.  
20 Wexler and the US Department of Labor guide, as  
21 well as speaking to other employability experts.

22 But as far as my opinions are contained  
23 right here on page four, are fully cited. To  
24 answer your question to the full extent, that's  
25 the answer.

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2 Q. How did you identify these articles that  
3 you selected for footnote 20?

4 MS. PRIMAVERA: Objection.

5 A. I don't understand that question.

6 Q. Well, how did locate the first of these  
7 two articles, the balancecareers.com article,  
8 "How much time to spend on a job search"?

9 A. Sitting here today I don't recall.

10 Q. How did you come across or how did you  
11 identify the second of those two; the  
12 Iamdiversity.com article, "How much time should  
13 you spend on your job search"?

14 A. Sitting here today, I don't recall.

15 Q. Generally speaking, if you wanted to  
16 answer the question of how much time is  
17 appropriate to spend when conducting a full-time  
18 job search for a person who is not working, how  
19 would you answer that question?

20 A. (No verbal response.)

21 Q. To clarify, how would you go about  
22 answering that question?

23 MS. PRIMAVERA: Objection.

24 Q. Do you understand my question?

25 A. Now that you rephrased it, can you ask

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2 it in one coherent question and then I can answer  
3 it.

4 Q. If you wanted to answer the question of  
5 how much time is appropriate for a person who is  
6 unemployed to spend seeking a full-time job, how  
7 would you go about learning the answer to that  
8 question?

9 MS. PRIMAVERA: Objection.

10 A. Of the topic with employability experts,  
11 other individuals, maybe such as headhunters;  
12 independent research, such as the US Department  
13 of Labor guide and then doing various searches to  
14 see what type of information comes about on that  
15 topic.

16 Q. Where would you conduct the various  
17 searches you just described?

18 A. You can look at various state web sites.  
19 Some states have more -- the information, such as  
20 New York Department of Labor used to post the US  
21 Department of Labor guide, which would talk about  
22 this topic. Other states give some specificity  
23 to this so the various states' Departments of  
24 Labor. Employability web sites from various  
25 practitioners, conversations with employability

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2 experts. And then if you want you can always do  
3 an initial Google search to see what topics or  
4 articles come up from various publications.

5 Q. Did you do a Google search to answer  
6 this question?

7 A. Did I?

8 Q. Yes.

9 A. You already asked that question and I  
10 said I don't recall.

11 Q. I didn't ask you that before.

12 A. No.

13 Q. Did you just answer the question?

14 A. True, I don't recall.

15 Q. So you the recall whether you did a  
16 Google search?

17 A. To find these articles or to do what?

18 Q. Did you do a Google search to find these  
19 articles?

20 A. I don't recall.

21 MS. BERMAN: Toni, let's pull up an  
22 exhibit I e-mailed to you entitled "How much  
23 time should you spend on your job search."

24 Let's mark this as an exhibit, Staller  
25 Exhibit 3.

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2 (Staller Exhibit 3, marked for  
3 identification.)

4 Q. Mr. Staller, I will represent to you  
5 this is a PDF of the Google results that I  
6 obtained when I plugged into the search bar, "How  
7 much time should you spend on your job search?"  
8 Do you see the first result at very top of  
9 the page?

10 A. The first result being?

11 Q. It says, "Plan around 20 to 25 hours a  
12 week."

13 A. I think the result would -- I don't know  
14 if you would call it a result but okay.

15 Q. Can we agree that's the same source  
16 "Iamdiversity.com" that you got this article in  
17 footnote 20 from?

18 A. I can't say that's the same article but  
19 that's the same source, I can agree with that --  
20 that's the same web page.

21 Q. Same source.

22 MR. BERMAN: Toni, if you can scroll  
23 down to the next result.

24 Q. "How much time should you spend on a job  
25 search?" Do you see above that bar it says

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2 www.thebalancecareers.com?

3 A. Yes.

4 Q. That's the same source as the other  
5 article in footnote 20, correct?

6 A. The same source, yes.

7 Q. So did you just Google these two  
8 articles?

9 MS. PRIMAVERA: Objection.

10 A. I still don't recall from five minutes  
11 ago.

12 Q. Do you know whether these are peer  
13 reviewed sources?

14 A. I don't know.

15 Q. Do you know whether they are recognized  
16 within the field of labor economists -- labor  
17 economics?

18 A. I don't know.

19 Q. Do you know whether they're scholarly  
20 researched?

21 A. I don't know.

22 Q. Do you have any basis from which you can  
23 ascertain whether these sources are reliable?

24 A. I have to look at the articles I pulled.  
25 I don't know sitting here.

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2 Q. Doesn't this article indicate that if I  
3 wanted to know the answer to the question of how  
4 long an individual who is not working should  
5 spent speak seeking a full-time job, I can just  
6 Google it?

7 MS. PRIMAVERA: Objection.

8 A. I don't understand -- your question is  
9 confusing. Can you restate it?

10 MR. BERMAN: Can you read back the  
11 question, Toni.

12 (Whereupon, last question read back.)

13 A. It sounds to me the question is  
14 mis-worded. I can't answer that question.

15 Q. The Google search results that you see  
16 on the screen here, don't they reflect that I, as  
17 a labor person, got the same answer you got just  
18 by Googling the question?

19 MR. FORTINSKY: Objection to form.

20 A. I don't know you got the same results.  
21 Right now you just showed the front page of a  
22 Google search. I don't know if those are the  
23 same articles.

24 Q. I'll represent to you they're the same  
25 articles.

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2 A. Mr. Berman, when we started the  
3 deposition at 11:00 you went through some rules  
4 and those rules are pretty common in depositions,  
5 especially on Zoom, it makes it a lot easier for  
6 the court reporter and for me if we don't talk  
7 over each other. Multiple times today you  
8 interrupted my answer and it messes up my train  
9 of thought and it makes the record not clear.  
10 I'm sure you're trying to get a clear record as  
11 I'm trying to give clear testimony.

12 If you can be so kind just to let me  
13 finish my answers and if you have follow-up  
14 questions, you paid for four hours and I'm happy  
15 to be here for four hours. I'm not going to rush  
16 you, just don't rush me and think we can get a  
17 better transcript.

18 Q. Thank you, Mr. Staller. I will do my  
19 best. I'm a New Yorker and I do have a tendency  
20 to interrupt. I apologize and will try to limit  
21 that.

22 A. I don't want to guess that you're a New  
23 Yorker. It's a big population.

24 Q. Thank you, sir.

25 A. But I didn't get to answer my last

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2 question, you cut me off. If we can read the  
3 last question back, I would like to continue my  
4 answer.

5 Q. That's fine.

6 MR. BERMAN: Toni, please read it back.

7 (Whereupon, requested portion of  
8 testimony read back.)

9 A. So what's presented here on exhibit --  
10 the current exhibit -- I don't know what exhibit  
11 it is.

12 Q. Plaintiff's Exhibit 3?

13 A. Exhibit 4?

14 Q. Plaintiff's Exhibit 3.

15 A. Thank you. From plaintiff's Exhibit 3,  
16 I can't say yes or no because this is just the  
17 front page from what I appears to be a PDF  
18 snapshot of a Google search. I can't say yes or  
19 no.

20 Q. Do you know who authored the article you  
21 referenced on the Balance Careers web page?

22 A. Not off the top of my head, no.

23 Q. Do you know whether that article was, in  
24 fact, was authored by a human being?

25 A. Not off -- I have to look at the

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2 article -- but not off the top of my head.

3 Q. If that article --

4 MS. BERMAN: Withdrawn.

5 Q. Do you though with that article was  
6 authored by AI?

7 A. I have to look at the article. I don't  
8 know.

9 Q. You understand when I use the term AI, I  
10 mean artificial intelligence, correct?

11 A. That's what I assumed when you were  
12 using the acronym, AI.

13 Q. What about with respect to the other  
14 article on Iamdiversity.com, do you know whether  
15 that article was authored by a human being?

16 A. Without looking at the full article, off  
17 the top of my head, I don't know.

18 Q. Do you know whether it was authored by  
19 artificial intelligence?

20 A. Again, without looking at the full  
21 article off top of my head, I don't know.

22 Q. Do you have the full article in your  
23 possession?

24 A. Let me see if I do. I can take a look.

25 Q. Are you reviewing one of the articles?

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2 A. I'm looking for it.

3 Q. Okay.

4 A. It appears that the article, how much  
5 time should you spend on job a search was  
6 written -- again, I've never met Allison Doyle  
7 but identifies -- it appears that she's not a  
8 computer or artificial intelligence. It appears  
9 Ms. Doyle is one of the industry's most highly  
10 regarded job search and career experts.

11 Q. When you say she's one of the industry's  
12 most highly regarded job search experts, what do  
13 you base that on?

14 A. The overview of her looking at her  
15 background and experience off of the Balance  
16 Careers website.

17 Q. So it's just based on upon what's on  
18 this piece of paper?

19 MS. PRIMAVERA: Objection.

20 A. I don't know which piece of paper you're  
21 referring to.

22 Q. The article that you're looking at.

23 A. So, no, off the article it says you can  
24 click on her picture to get more information on  
25 her. So it's just not off the article itself,

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2 it's now coming off what it appears by her  
3 biographical background.

4 Q. You don't have any independent knowledge  
5 about her level of expertise do you?

6 A. I don't have independent knowledge of  
7 Ms. Doyle's expertise, no.

8 Q. You don't recognize her as an expert in  
9 her field of study, do you?

10 MS. PRIMAVERA: Objection.

11 A. Do I recognize her as an expert?

12 Q. Yes.

13 A. In job search activities based upon her  
14 article, yes.

15 Q. So based upon her article you came to  
16 that conclusion, correct?

17 A. Her article and her biography as  
18 available on the balancecareers.com.

19 Q. Do you have any other independent basis  
20 for making that assessment?

21 A. No.

22 Q. With respect to the article on  
23 Iamdiversity.com, do you know was the author of  
24 that article?

25 A. Let me check. It appears it was

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2 authored -- again, it appears to be an actual  
3 human being -- Sean McGuigan, M-C-G-U-I-G-A-N.

4 Q. Do you have any independent basis for  
5 the statement that that person identified is, in  
6 fact, a live human being?

7 A. I mean, I've never taken the person's  
8 temperature but based upon the representation on  
9 the website that it's authored by a person with a  
10 first name and last name, I've accepted it's  
11 authored by a real person.

12 Q. So you don't have an independent basis  
13 for making that determination, do you?

14 A. Outside of this article, I've never met  
15 Mr. McGuigan.

16 Q. Are you aware of Mr. McGuigan being an  
17 expert in your field of study?

18 A. In my field of study?

19 Q. Yes.

20 A. I have not seen Mr. McGuigan's  
21 biography.

22 Q. Do you have any other independent  
23 awareness of this person, if it is, in fact, a  
24 person, their level of expertise in any field?

25 A. Not outside of this article.

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2 Q. Thank you. Turning back to Balance  
3 Careers article for a moment -- do you have that  
4 in your possession, correct?

5 A. Yes.

6 Q. That article is dated June 7, 2020,  
7 correct?

8 A. Yes.

9 Q. Do you see the second paragraph of that  
10 article from where it begins there is no right or  
11 wrong answer for or set amount of time?

12 A. Yes.

13 Q. Do you factor that into your opinion as  
14 to whether a full-time job search should be from  
15 25 to 40 hours per week?

16 A. Yes. Again, this article -- you have to  
17 read the article in its totality. Right, I do  
18 see that one sentence. In a broader context, I  
19 do factor it in, yes.

20 Q. Moving on. Back to the expert report,  
21 please.

22 MR. BERMAN: Let the record reflect  
23 we're looking at page five of the expert  
24 report.

25 Q. Sir, I would like to direct your

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2 attention to the top portion of the page where it  
3 says, Section V, "Relevant Employment and  
4 Unemployment Statistics."

5 Do you see where I'm directing your  
6 attention?

7 A. Yes.

8 Q. Okay. So Table B, listed below the  
9 first paragraph there, is entitled "Duration of  
10 unemployment, January of 2017."

11 Do you see where I'm looking?

12 A. Yes.

13 Q. How did you use the data in this table  
14 to formulate your opinion in this matter?

15 A. As discussed earlier today, this labor  
16 market data is the broader swift (sic) of what  
17 the marketplace looked like based upon various  
18 demographic criteria similar to Ms. Fischman for  
19 what we would have expected for Ms. Fischman to  
20 get re-employed or to what would be a reasonable  
21 period of time.

22 So, again, this data I take as part of  
23 foundational information I used to form my  
24 opinions about whether her search was reasonable  
25 and diligent and this would be the economic labor

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2 market statistics that indicate people that are  
3 separated from employment based upon the criteria  
4 in the category column were able to get  
5 reemployed relatively quickly as compared to what  
6 Ms. Fischman did.

7 Q. Have you completed your answer?

8 A. I have.

9 Q. Is it fair to call what you just  
10 described a methodology?

11 A. I don't know if I would call it a  
12 methodology or more as underlying relevant  
13 economic data that's applied in my analysis.

14 I'm not sure what part would be  
15 methodology.

16 Q. Okay. I think you just said that you  
17 applied the data to the methodology, did I get  
18 that right?

19 A. This is one of the data piece that goes  
20 into my analysis which forms my conclusions, yes.

21 Q. If I refer to the phrase application of  
22 the duration of unemployment data, can we agree  
23 that that's the process that you just described  
24 or is there something else we should call it?

25 A. (No verbal response.)

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2 Q. I'm just looking for a term that we can  
3 use to refer back to the process you just  
4 described.

5 A. The term would be doing relevant  
6 economic research and then to gather information  
7 than can then be applied to the specifics of a  
8 case, such as Ms. Fischman's, and the specifics  
9 of Ms. Fischman's situation. I don't know if  
10 there's one simple term that covers all of that.

11 Q. For the sake of this particular  
12 conversation, can we just label this with the  
13 term "a process," so we know what we're talking  
14 about; is that fair?

15 A. So just -- I don't mind simplifying it  
16 but the process of doing research to come -- to  
17 get data that can be applied later on.

18 Q. Can we call that a research process  
19 then? What are you comfortable referring it to  
20 so I don't have to say a full paragraph each time  
21 I ask you about it?

22 A. I would be comfortable calling this the  
23 research process with regard to unemployment  
24 statistics.

25 Q. That's fine. I'll try to remember that

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2 term. The research process -- what was the rest  
3 of it?

4 A. Applied to unemployment statistics.

5 Q. Did you use this research process  
6 applied to unemployment statistics in previous  
7 expert reports?

8 A. Yes.

9 Q. Has your use of that research process  
10 applied to unemployability statistics ever  
11 challenged on a motion to exclude?

12 A. I don't know.

13 Q. Do you know whether any Federal court  
14 has excluded expert testimony on the basis of the  
15 research process applied to unemployment  
16 statistics that you just identified?

17 A. Any Federal court in any case, is that  
18 your question?

19 Q. For now, yes.

20 A. I don't know.

21 Q. Do you practice law in the Federal  
22 District of the Eastern District of Pennsylvania?

23 A. Do I practice law there?

24 Q. Yes, sir.

25 A. I was licensed there. I haven't

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2 practiced law since 2005.

3 Q. Do you know whether any Federal court in  
4 the Eastern District of Pennsylvania has excluded  
5 expert testimony on the basis of a research  
6 process applied to unemployment statistics of the  
7 kind you just identified?

8 A. I don't know.

9 Q. Are you familiar with the case of  
10 Speights, S-P-E-I-G-H-T-S versus Arsens,  
11 A-R-S-E-N-S, Home Care, Inc.?

12 A. Yes.

13 Q. Does that refresh your recollection as  
14 to whether any Federal court has excluded expert  
15 testimony on the basis of the research process  
16 applied to unemployment statistics?

17 A. In the matter of Speights v Arsens?

18 Q. Correct.

19 A. I'm familiar with that case as I was the  
20 defense economist in that case. To my  
21 recollection, the Eastern District Federal Court  
22 permitted based upon a motion in limine or a  
23 Daubert challenge the complete analysis,  
24 including this process, with the one limitation  
25 that I could not simply talk about the ultimate

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2 opinion of failure to mitigate. But other than  
3 that, all other opinions and analysis were deemed  
4 permissible.

5 Q. That's your understanding of the  
6 decision in Speights versus Arsens Home Care,  
7 Inc.?

8 A. Yes.

9 Q. Are you aware of whether the Court in  
10 that matter considered the use of the forensic  
11 job stats database?

12 A. I know used it in that matter and I --  
13 after speaking to that attorney, who I was  
14 retained by, I knew I can -- would be able to  
15 testify to it. I don't know if -- the legal  
16 opinion.

17 Q. Do you know whether the use of the  
18 forensic job stats database was permitted by the  
19 Court in that matter?

20 A. To the best of my understanding, it was.  
21 But, again, my understanding had one limitation.  
22 That's my understanding.

23 Q. That's your understand in the decision  
24 in Speights versus Arsens Home Care?

25 A. Yes.

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2 Q. Have you reviewed the case?

3 A. No.

4 Q. Have you reviewed any cases that allowed  
5 the use of the forensic job stats database?

6 A. I testified to it in other cases. I  
7 haven't done a search with regard -- a legal  
8 search with regard to the use.

9 Q. Are you aware of any Federal case  
10 anywhere in United States at any time that  
11 allowed the use of the forensic job stats  
12 database when challenged on a motion to exclude?

13 A. I don't know.

14 Q. In that case was your expert report  
15 prepared by you and Steven Dripps?

16 A. Which case are you referring to now?

17 Q. The Speights versus Arsens Home Care  
18 case?

19 A. I believe Mr. Dripps cosigned that  
20 report, yes.

21 Q. That was prepared by the Center For  
22 Economic Studies, correct?

23 A. Yes.

24 Q. Do you know whether that case considered  
25 the legal standard applicable to a Daubert

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2 motion?

3 MS. PRIMAVERA: Objection.

4 A. I didn't testify at a Daubert hearing.  
5 It might have been a paper filing on a Daubert  
6 challenge.

7 Q. Are you familiar with the requirement of  
8 Federal rule of evidence 702?

9 A. I don't have it memorized, no.

10 Q. Are you familiar with the case of  
11 Patruilio versus Teleflex, Inc.?

12 A. The case sounds familiar but I don't  
13 have a memory of it sitting here.

14 Q. What about the case of Roger versus  
15 McCaul?

16 A. I'm not familiar with that case.

17 Q. What about the case Costullcio versus  
18 International Business Machines, Corp.?

19 A. I'm not familiar with that case.

20 Q. Do you know whether any court has  
21 excluded a testifying expert's testimony  
22 concerning the reasonableness and diligence of a  
23 plaintiff's job search efforts?

24 A. Can I hear the question back.

25 MR. BERMAN: Can you read it back, Toni.

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2 (Whereupon, last question read back.)

3 A. So I have seen in cases and my  
4 understanding from speaking to the attorney as  
5 retained by the Speights matter, I've seen a  
6 limitation of experts not being able to give an  
7 ultimate opinion of the plaintiff has failed to  
8 mitigate with that ultimate statement being  
9 provided. But otherwise, I have testified to and  
10 been permitted to testify to the efforts of the  
11 plaintiff without giving the ultimate opinion.

12 Q. In your expert report that's presented  
13 here, aren't you given the ultimate opinion as to  
14 plaintiff's reasonableness and diligence of their  
15 job search?

16 MS. PRIMAVERA: Objection.

17 A. I'm putting forth this statement that,  
18 again, based upon Ms. Fischman's reported job  
19 search efforts, relevant labor market data, data  
20 specific to the MSA we've already discussed, that  
21 when you put all that together that her efforts  
22 were not reasonable and diligent. I do not put  
23 forth opinion that she failed to mitigate. It's  
24 my understanding that would be the ultimate  
25 determination for the trier of fact.

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2 And I testified to these findings in  
3 other matters without giving the ultimate  
4 opinion. And my understanding in that Speights  
5 matter was as permitted to testify -- the case  
6 settled, so it did not get into the courthouse --  
7 but in Speights the limitation was I would not be  
8 able to testify to ultimate opinion as failed to  
9 mitigate but I can discuss the efforts and the  
10 labor market for Ms. Speights similar to Ms.  
11 Fischman.

12 Q. Are you aware, sir, your expert report  
13 was excluded in part in the matter of Speights  
14 versus Arsens Home Care?

15 A. Yes, I just discussed that with you. In  
16 that case my report did have the language "failed  
17 to mitigate" and I was not permitted to testify  
18 to that statement of a failure -- has failed to  
19 mitigate.

20 Q. Are you aware, sir, that your testimony  
21 concerning the plaintiff's reasonable and  
22 diligence was also excluded?

23 A. I'm not aware of that, no.

24 Q. Are you aware that your use of the  
25 forensic job stats database was excluded?

1 C. Staller - Confidential

2 A. I'm not aware of that.

3 Q. Are you aware that the Court found your  
4 report did not provide information regarding the  
5 reliability of that database?

6 A. I'm not aware of that.

7 Q. Are you aware the Court found that there  
8 is also no explanation of how the experts used  
9 the information from forensic job stats in  
10 reaching the conclusion that plaintiff should  
11 have found a job in six months or how many jobs  
12 must appear in the database to support the  
13 conclusion that there were plentiful job  
14 opportunities?

15 MS. PRIMAVERA: Objection.

16 A. I'm not aware of that.

17 Q. Do you know whether within the Southern  
18 District of New York a testifying expert may  
19 opine as to whether a job candidate's search was  
20 reasonable or diligent?

21 A. Not off the top of my head. I don't  
22 know the legal stance.

23 Q. Do you know whether within the Southern  
24 District of New York a testifying expert may give  
25 testimony concerning the amount of time a

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2 plaintiff can be expected to find a job within?

3 THE WITNESS: Repeat the question, madam  
4 court reporter -- can you read it back.

5 (Whereupon, last question read back.)

6 A. That calls for a legal opinion in the  
7 Southern District. I don't know off the top of  
8 my head.

9 Q. So you don't know the answer, correct?

10 MS. PRIMAVERA: Objection.

11 A. True, not off the top of my head.

12 Q. Do you know whether your own testimony  
13 on those two questions has previously been  
14 excluded in the Southern District of New York?

15 A. I'm aware of one matter in the Southern  
16 District of New York where I was permitted to  
17 testify to the mitigation efforts and data with  
18 one limitation, that there was one opinion of six  
19 or seven within that report that I was not  
20 permitted to testify to based upon a lack of -- I  
21 believe, the opinion said proper citation for the  
22 data source.

23 Q. Have you completed your response?

24 A. Now I have, yes.

25 Q. What matter are you referring to?

1 C. Staller - Confidential

2 A. Yang v. Navigators.

3 Q. Okay. And in Yang v. Navigators did you  
4 give an opinion concerning how long it should  
5 have taken for the plaintiff to find comparable  
6 employment?

7 A. I provided several opinions with regard  
8 to the efforts of the plaintiff and the  
9 mitigation efforts of the plaintiff. I just  
10 don't recall the opinions.

11 Q. So sitting here today you don't know  
12 whether one of your opinions concerned how long  
13 it would be expected for it to take for the  
14 plaintiff to find employment?

15 MS. PRIMAVERA: Objection.

16 A. That's a -- can you restate the  
17 question. I don't understand it as worded.

18 Q. Didn't the Court exclude your opinion  
19 concerning how long it would have taken the  
20 plaintiff to find employment?

21 A. In the Yang matter?

22 Q. Yes, sir.

23 A. I would have to read the Court's opinion  
24 again. I do not believe I was permitted to  
25 testify as a labor economist to every opinion in

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2 my report except the one. And I believe the  
3 opinion only precluded that based upon what I  
4 perceived failure to provide a citation to a data  
5 source.

6 Q. Did you read the opinion?

7 A. When it was issued six or seven years  
8 ago.

9 Q. If a court told you that your testimony  
10 was excluded, would you offer again within the  
11 same jurisdiction?

12 MS. PRIMAVERA: Objection.

13 A. Again, my exclusion on that one opinion,  
14 I was permitted to testify in the Southern  
15 District on all the issues of that plaintiff's  
16 mitigation issues with the exception of one  
17 opinion with regard to a data source that the  
18 Court perceived was not properly footnoted.  
19 However, it was however was properly cited in my  
20 report -- it was fully cited in my report. It  
21 wasn't based upon the opinion itself. The Court  
22 in that matter found there was a lack of  
23 citation -- which there was citation, for the  
24 record.

25 Q. In that matter didn't you compare the

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2 plaintiff there to any employee of the age of 25?

3 MS. PRIMAVERA: Objection.

4 A. I don't recall. The matter was, I  
5 think, six or seven years ago.

6 Q. Didn't you compare the plaintiff's job  
7 search to the New Jersey guidelines for  
8 unemployment benefits?

9 MS. PRIMAVERA: Objection. The witness  
10 testified that he doesn't recall the  
11 opinion.

12 A. I don't -- I still don't recall  
13 specifics on that besides the one limitation and  
14 all their opinions were permissible.

15 Q. In the Speights matter where you used  
16 the research process applied to unemployment  
17 statistics, did you look at the category of all  
18 workers?

19 MS. PRIMAVERA: Objection.

20 A. I don't recall.

21 Q. Did you look at category of women age 45  
22 to 54?

23 A. I don't recall.

24 Q. Your report here looks at those two  
25 categories, correct?

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2 A. In addition to two others, yes.

3 Q. Those two others being the management  
4 professional and related occupations category,  
5 number one; and the manufacturing category,  
6 number two, correct?

7 A. Yes.

8 Q. What's included within the management  
9 professional and related occupations category?

10 A. I have to go back and look at the DOL  
11 footnote. Sitting here I don't recall all the  
12 subcategories or all the job codes within them.

13 Q. Have you completed your answer?

14 A. I have.

15 Q. Do you know whether it includes doctors?

16 MS. PRIMAVERA: Objection.

17 A. As I just said, I would have to go back  
18 and look at the subclassifications, which I  
19 haven't memorized here.

20 Q. Setting aside whether you memorized it,  
21 do you know whether it includes doctors?

22 MS. PRIMAVERA: Objection; asked and  
23 answered.

24 Q. That's a "no," right?

25 MS. PRIMAVERA: Objection. You can

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2 answer if you understand the question.

3 Can you read back the last question,  
4 please.

5 (Whereupon, last question read back.)

6 A. I would have to look at the source.

7 Q. What about dentists?

8 A. I have to, again, look at the  
9 subclassifications within the broad category. I  
10 don't know that I still have it memorized.

11 Q. This category includes professionals,  
12 correct?

13 A. It does.

14 Q. Doctors are professionals, correct?

15 MS. PRIMAVERA: Objection.

16 A. Deemed as a professional with a  
17 professional degree, yes.

18 Q. So are dentists, correct?

19 A. That's my understanding, yes.

20 Q. And so are dental hygienists, correct?

21 MS. PRIMAVERA: Objection.

22 A. I don't know if dental hygienists are  
23 treated as professionals. I would have to,  
24 again -- I don't know what source you're using to  
25 define that.

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2 Q. What about engineers?

3 MS. PRIMAVERA: Objection.

4 A. Engineers -- engineers I think are  
5 typically classified as professionals, yes.

6 Q. What about teachers?

7 MS. PRIMAVERA: Objection.

8 A. From a traditional standpoint, teachers  
9 are not defined as professionals.

10 Q. What about real estate brokers?

11 MS. PRIMAVERA: Objection.

12 A. Typically -- again, it depends on which  
13 classification. Typically professionals are  
14 limited to individuals who possess a professional  
15 degree, which would be juris doctorate, an MD --  
16 maybe a DO, and I believe engineers.

17 Q. And management is also included in this  
18 category, correct?

19 MS. PRIMAVERA: Objection.

20 A. Which category, professional?

21 Q. No, this category you utilized;  
22 management, professional and related  
23 qualifications?

24 A. Management is part of this category,  
25 yes.

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2 Q. And what is management comprised of?

3 MS. PRIMAVERA: Objection.

4 A. Without having memorized the specific  
5 definition, typically the individuals that have  
6 managerial capacity would be defined as oversight  
7 of other employees.

8 Q. In this matter you relied upon the  
9 forensic job stats database, correct?

10 A. In the last 15 minutes we discussed  
11 multiple matters. When you say "this matter,"  
12 what matter are you referring to?

13 Q. In your expert report, it's he relying  
14 on the job stat database, correct?

15 A. My expert report in Ms. Fischman's case?

16 Q. Yes.

17 A. Yes.

18 Q. Do you know where forensic job stats  
19 gets its data from?

20 A. Yes. It's --

21 Q. Is your answer still in process?

22 A. Yes. It's -- I think it's like the  
23 teletron database -- I'm pronouncing it  
24 incorrectly -- but I do, yes.

25 Q. Sir, are you referring to reference

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2 materials during your testimony now?

3 A. I'm looking at my report.

4 Q. Are you looking at any other reference  
5 materials?

6 A. No.

7 Q. Have you taken any steps to consider the  
8 reliability of the data within the forensic job  
9 stats database?

10 MS. PRIMAVERA: Objection. You can  
11 answer.

12 A. Only to the extent it's -- I look at the  
13 published job postings. That will be the extent  
14 of my investigation.

15 Q. Do you have any other independent basis  
16 to ascertain the reliability of the data within  
17 forensic job stats database?

18 MS. PRIMAVERA: Objection.

19 A. As far as reliability in what regard?

20 Q. In the Daubert context, do you  
21 understand that reliability is the foundation for  
22 the admissibility of expert testimony, correct?

23 MS. PRIMAVERA: Objection.

24 A. Yes.

25 Q. So within that context, have you got any

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2 independent knowledge that you can use to  
3 ascertain the reliability of the data within the  
4 forensic job stats database?

5 A. Within the definition of "reliability"  
6 as used in the Federal Rules of Civil Procedure,  
7 yes -- meaning do these jobs actually --

8 THE REPORTER: I'm sorry, you went out.

9 A. As the term "reliability" within the  
10 Daubert context, that will mean different things  
11 for different experts and different sources.

12 As I take it as applied to your line of  
13 questioning with regard to the ads themselves  
14 that are existing to be are they reliable in the  
15 sense that they're presenting actual jobs, I have  
16 tested the reliability in other matters, meaning  
17 did these jobs exist at that time where certain  
18 ads that were pulled from the database were then  
19 also corroborated by clients that had those  
20 postings that were then put on this third-party  
21 source, such as Zip Recruiter. As far as test  
22 reliability and other matters, as to the  
23 existence of those ads at that point in time,  
24 yes.

25 Q. Have you tested the existence of any of

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2 the ads in this expert report that you cited?

3 A. I haven't -- no, because I would have to  
4 go back to the Mitsubishi ad to look -- but I  
5 excluded -- and there were some that came up in  
6 this matter -- but I haven't done so to date.

7 Q. Is the forensic job stats database  
8 specific to plaintiff's field?

9 A. Ms. Fischman's field?

10 Q. Correct.

11 A. Ms. Fischman as a practicing attorney or  
12 corporate counsel?

13 Q. You tell me.

14 A. It's specific based upon what she did  
15 for Mitsubishi and based upon the work she  
16 identified in her resume.

17 Q. The forensic job stats database is  
18 specific to plaintiff's field?

19 MS. PRIMAVERA: Objection.

20 A. So maybe you have a vague question. I'm  
21 a glad you're re-asking it because it's probably  
22 a bad answer on a bad question.

23 Are you asking does forensic job stats  
24 only do lawyers or does it have a database that  
25 can query based upon job posts? I need some

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2 clarification.

3 Q. Let's do it this way. What does the  
4 forensic job stats database include with respect  
5 to the fields or occupations of job hunters?

6 A. Their database is going to be based upon  
7 the SOC codes.

8 Q. The SOC codes included within the  
9 forensic job stats database include codes for  
10 fields outside of Ms. Fischman's field, correct?

11 MS. PRIMAVERA: Objection.

12 A. In addition to the job codes identified  
13 relevant to Ms. Fischman, their database has  
14 other job codes, yes.

15 Q. What job code did you select with  
16 respect to the analysis of Ms. Fischman comparing  
17 it to the forensic job stats database?

18 MS. PRIMAVERA: Objection.

19 A. Lawyers, chief executives -- and with  
20 the key words general counsel, chief compliance  
21 officer, assistant general counsel, corporate  
22 counsel.

23 Q. Any others?

24 A. Not for Ms. Fischman, no.

25 Q. Were there any other SOC codes that you

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2 considered and rejected?

3 A. Not for Ms. Fischman, no.

4 Q. Do you know whether the construction of  
5 the forensic job stats database is biased in  
6 favor of defendants in litigation?

7 MS. PRIMAVERA: Objection.

8 A. I didn't create the database so I have  
9 no knowledge of any biases for plaintiff or  
10 defense. I didn't create it.

11 Q. Did you take any steps to ascertain  
12 whether the database was free from bias?

13 MS. PRIMAVERA: Objection.

14 A. The database based upon the search  
15 criteria in Ms. Fischman's case, based upon the  
16 criteria you see on page five would be free from  
17 bias.

18 Q. Are you familiar with the concept of  
19 garbage in, garbage out?

20 A. In what context?

21 Q. In any context.

22 A. I'm familiar in the trash context, when  
23 you put trash in a garbage.

24 Q. What about in the context of querying a  
25 database?

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2 A. Well -- I'm not sure in the context of  
3 querying a database of how you're using that  
4 term.

5 Q. Is it fair to say, sir, that the quality  
6 of the data extracted from the database is based  
7 upon the quality of the data put into the  
8 database?

9 MS. PRIMAVERA: Objection.

10 A. Again, that's a really vague and broad  
11 question. I can say that the information from a  
12 database is going to be driven by what's in the  
13 database.

14 Q. In your use of the management  
15 professional and related occupations category,  
16 did you consider whether any other category would  
17 be more appropriate?

18 A. Based upon the Department of Labor's  
19 classification -- now we're referring to Table B,  
20 correct?

21 Q. Correct.

22 A. So, with regard to the subcategories  
23 available, based upon the Department of Labor  
24 publication of unemployment data, my attempt with  
25 the four presented categories was to provide the

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2 most relevant cuts of the data that existed or  
3 that does exist for Ms. Fischman. So that starts  
4 with all workers, that's based upon broadly  
5 gender and then within the two most refined  
6 occupation categories available to Ms. Fischman.

7 Q. Did you consider any other categories  
8 and whether they would be more appropriate?

9 MS. PRIMAVERA: Objection.

10 A. No.

11 Q. Do the occupational categories that you  
12 just identified in Table B differentiate between  
13 employees at different compensation rates?

14 A. In categories -- well, the third row,  
15 management, professionals and related  
16 occupations, differentiates compared to isolating  
17 certain population of the labor force based upon  
18 job title, which is then associated with  
19 compensation.

20 Q. Have you completed your response?

21 A. I have.

22 Q. Does that category you just identified,  
23 management, professional and related occupations  
24 include CEOs, chief executive officers?

25 A. I have to, again, look within the

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2 Department of Labor's definition of what's  
3 contained in all those -- in a broad title. I  
4 don't recall sitting here today.

5 Q. Is there some other management category  
6 that chief executives would possibly fall into,  
7 other than the management, professionals and  
8 related occupations category?

9 A. I would have to look at the Department  
10 of Labor site.

11 Q. So sitting here today you don't know  
12 whether this category includes chief executive  
13 officers, correct?

14 A. True.

15 Q. You don't know whether it includes  
16 dental hygienists, correct?

17 A. I don't know sitting here. But again, I  
18 don't think within the definition of professional  
19 that a dental hygienist would meet that criteria  
20 unless the dental hygienist happens to have a  
21 doctorate degree.

22 Q. The duration of unemployment information  
23 in this table doesn't differentiate between a  
24 chief executive and a dental hygienist, does it?

25 A. I don't know because I would have to see

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2 where the hygienist is characterized.

3 Q. What about between a chief executive  
4 officer and an engineer?

5 A. An engineer can be a CEO.

6 Q. What about a CEO and a non-CEO engineer?

7 A. Again, CEOs are included within  
8 management. As I already answered, I don't know  
9 sitting here. I have to look at Department of  
10 Labor definition. But if you're asking a  
11 hypothetical that they are included, then those  
12 would be put together.

13 Q. Wouldn't one expect the compensation  
14 rates for CEOs to be differentiated from that of  
15 other professionals?

16 MS. PRIMAVERA: Objection.

17 A. So Table B is not measuring  
18 compensation, it's measuring how long does it  
19 take a person separated from employment to get  
20 reemployed.

21 Q. Sure.

22 A. I'm not sure of the relevance of  
23 compensation to Table B.

24 Q. Are you aware of any relationship  
25 empirically between duration of unemployment and

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2 compensation rates?

3 A. Not off the top of my head, no.

4 Q. Do you recall when I asked you if you  
5 were familiar with the Costullcio case?

6 A. Yes.

7 Q. Are you aware that in that case the  
8 trial court excluded the testimony as the  
9 testifying witness who relied upon the management  
10 professional and related occupations category?

11 A. No, because I'm not familiar with that  
12 case.

13 Q. Is there a positive correlation between  
14 age and duration of unemployment?

15 MS. PRIMAVERA: Objection.

16 A. Can you restate -- repeat the question.

17 MR. BERMAN: Can you read it back,  
18 please, Toni.

19 (Whereupon, last question read back.)

20 A. A correlation statistic just means  
21 there's a relationship between two variables. So  
22 there's a -- I don't know how your using the term  
23 "positive" in front of correlation.

24 Q. Is there a relationship between those  
25 two variables, age and duration of unemployment?

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2 A. Yes.

3 Q. What's the nature of that relationship?

4 A. All other things being equal on average,  
5 the older the individual the longer the average  
6 duration of unemployment.

7 Q. In assessing the duration of  
8 unemployment, did you consider Ms. Fischman's  
9 practice specialties?

10 A. At Mitsubishi?

11 Q. Yes.

12 A. So -- again, the cuts of the data from  
13 the Department of Labor do not cut it that  
14 granular. As granular as I can get was within  
15 the four categories identified in Table B.

16 Q. Did you take into consideration the type  
17 of clients she had at Mitsubishi?

18 A. In what regard?

19 Q. Did you consider the effect of practice  
20 specialty upon duration of unemployment?

21 MS. PRIMAVERA: Objection.

22 A. So, again, the data from the Department  
23 of Labor, unfortunately, does not go into  
24 lawyer's subspecialty practices and then cuts  
25 duration of unemployment at that granular level.

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2 So that data does not exist.

3 Q. Did you rely upon your experience as an  
4 attorney in making assessments concerning Ms.  
5 Fischman's duration of unemployment?

6 A. My experience as an attorney would be  
7 employed with the general conclusions I offered  
8 in my report.

9 Q. Does your report explain how your  
10 experience as a lawyer leads to your conclusions?

11 MS. PRIMAVERA: Objection.

12 A. With regard to that last question, I  
13 think that was explored today. We just explored  
14 that before the break.

15 Q. Have you completed your response?

16 A. Yes.

17 Q. So your expert report doesn't  
18 specifically identify how your legal experience  
19 led to any of your conclusions, does it?

20 A. As outlined in my summary on page nine,  
21 obviously, those were my conclusions, my  
22 findings -- and when I say "my," that's me, Chad  
23 Staller, a licensed attorney in three states with  
24 20 years experience. So, obviously, when I'm  
25 authoring that report, that has the inherent

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2 background that we covered in my resume and CV,  
3 so those are findings that are associated with my  
4 background, training and experience.

5 Q. Sir, I agree with you that your report  
6 discloses that you are an attorney and an  
7 experienced one.

8 What I'm asking you is whether your report  
9 discloses how that experience leads to your  
10 conclusions? That's not contained within your  
11 report, is it?

12 A. My conclusions are based upon my review  
13 of Ms. Fischman's documented job search, the  
14 broad economic data we just discussed in Table B,  
15 and then the more specific data relevant to her  
16 MSA from February of 2017 through April of 2020,  
17 so it's the blend. And then my interpretation of  
18 that information as a trained lawyer and a  
19 trained labor economist making those conclusions,  
20 which are set forth on page nine. And it sounds  
21 as if you're suggesting I have to write in every  
22 sentence of my report "I, as a lawyer since 2001,  
23 finds that Ms. Fischman's job search was  
24 insufficient," where I just don't write a report  
25 like that. That's why you have my CV.

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2 Q. Under Federal Rule of Civil Procedure  
3 26(a), aren't you required to explain how you  
4 your experience leads to your particular  
5 conclusions?

6 MS. PRIMAVERA: Objection.

7 A. I have to take a look at 26(a).

8 Q. Haven't you just testified that you're  
9 relying upon your legal experience and not just  
10 your economic experience?

11 MS. PRIMAVERA: Objection.

12 A. Right. You had multiple questions  
13 throughout today that were specific to Ms.  
14 Fischman and several ads with regard to her bar  
15 licensure or the lack thereof, where we discussed  
16 that at length of why I thought those  
17 opportunities would still be specific and  
18 relevant to Ms. Fischman to explore.

19 Obviously, in my report that -- I didn't  
20 highlight every specific opportunity. They were  
21 attached as attachment one. So to answer your  
22 questions that came up in today's deposition, I  
23 answered those.

24 But as far as my background, training  
25 and experience that's fully set forth in my

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2 curriculum vita, my methodology to reach my  
3 conclusions as fully set forth in my report and  
4 the basis for my conclusions are fully set forth  
5 in my report.

6 Q. Let's turn to page eight of your report.

7 Mr. Staller, I direct your attention to the  
8 second to last full paragraph.

9 Do you see "As shown in Table B, the median  
10 duration of unemployment for categories  
11 applicable to Ms. Fischman ranged from 9.6 to  
12 17.0 weeks in January -- and it continues from  
13 there, right; do you see that paragraph?

14 A. Yes.

15 Q. Can I please direct your attention to  
16 the last full sentence, which reads: "In our  
17 opinion, had Ms. Fischman conducted a reasonable  
18 job search subsequent to her separation from  
19 Mitsubishi, she should have found full-time  
20 employment within a period ranging from six to at  
21 most nine months." Do you see that sentence?

22 A. Yes.

23 Q. How did you come to the determination it  
24 would take a period from six to at most nine  
25 months?

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2 A. Going back to Table B -- going back to  
3 Table B, the lowest, quickest data point is all  
4 workers, which was 9.6 weeks, where overall in  
5 the US economy in 2017 it took 9.6 weeks for the  
6 50 percent to have obtained re-employment.

7 On the long end looking at the mean of  
8 Table B -- the longest mean -- was 36.6 weeks, so  
9 that's nine months.

10 So what's included in that would be the  
11 manufacturing industry, which Mitsubishi would be  
12 part of and her work related to Mitsubishi as  
13 corporate counsel would be in there. And then  
14 within management professional and related  
15 occupations are also subsumed within that range.

16 So while the data points are from the  
17 broader categories, they are providing the two  
18 end points from which the more specific  
19 categories relevant to Ms. Fischman's work  
20 experience are contained. So that's where that  
21 time period is coming from.

22 Q. How can you make an estimation on how  
23 long it would take her to find employment based  
24 only upon the mean or a median for a larger  
25 group?

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2 MS. PRIMAVERA: Objection.

3 A. That's being the most generous, that  
4 women or individuals within her more specific  
5 occupation or trade have been 26.7 or 30.4 weeks.  
6 By suggesting it would take up to nine months,  
7 going based upon the broad age and gender  
8 category is being conservative.

9 Q. None of these categories comprise  
10 individuals with Ms. Fischman's same  
11 characteristics for employment purposes, right,  
12 you're comparing her to a larger broader group of  
13 individuals from various divers backgrounds,  
14 correct?

15 MS. PRIMAVERA: Objection.

16 A. No. So the manufacturing category would  
17 contain professionals working in the  
18 manufacturing industry, management professional  
19 related occupations -- by definition,  
20 professionals would be lawyers as defined in the  
21 professional trades. So Ms. Fischman is a lawyer  
22 would fit into that category. So those are the  
23 most relevant categories --

24 Q. Sir, I understand that she is within  
25 each of those categories you identified. But in

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2 addition, there are many other types of employees  
3 within each of those categories, are there not?

4 MS. PRIMAVERA: Objection.

5 A. There will other occupations, sure.  
6 Unfortunately, the Department of Labor doesn't  
7 have the resources to only capture the  
8 unemployment data for corporate counsel or acting  
9 general counsel or acting -- or sorry -- chief  
10 compliance officer from a Fortune 100 company.  
11 That data just does not exist at that granular  
12 level, which is why we -- that's why the  
13 Department of Labor categorizes it based upon  
14 broader classification of similar situated  
15 individuals to provide benchmarks of what we  
16 expect based upon the categories identified in  
17 Table B.

18 Q. Okay. Without that data how can you  
19 reliably determine how long it would take  
20 somebody to find employment?

21 MS. PRIMAVERA: Objection.

22 A. If you look at the overall US economy,  
23 all workers. So, again, what we know as a labor  
24 economist "all workers," that will capture highly  
25 skilled and unskilled individuals. So unskilled

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2 individuals as we know from labor economic theory  
3 has greater demand of jobs, meaning, more volume.  
4 Those individuals that are filing for the retail  
5 jobs, the restaurant jobs, general manufacturing  
6 jobs. So there's more individuals that have less  
7 academic training than Ms. Fischman in the entire  
8 population. That population took between nine to  
9 twenty-three weeks. Then we cut it based upon  
10 age of all vocations -- but as we discussed, Ms.  
11 Fischman, while in her forties, is not considered  
12 older by general standards in the economy. That  
13 population between 45 and 54 put 17.36 weeks,  
14 which is the longest duration you see in that  
15 chart. And as we discussed, there is a  
16 correlation between age and average duration.  
17 Regardless of vocation -- so people who are  
18 unskilled that are older have the longest time to  
19 find re-employment, that's what that category  
20 represents.

21 Now we have the benefit of applying the  
22 attributes to the vocation of Ms. Fischman,  
23 management, professional related occupations.  
24 Those individuals are now based upon higher  
25 education, highly skilled jobs. We know from

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2 that population that it's taking 13.7, as a  
3 medium, to 30.4. Then we refine the search -- if  
4 you don't want to go off her trade or her  
5 vocation as a trained lawyer practicing law, you  
6 want to go off the industry in which she worked  
7 since 2008 within the manufacturing world, we  
8 know what that population looks like. So the  
9 data has been cut based upon the criteria for Ms.  
10 Fischman. So this has relevance to Ms. Fischman  
11 either by her gender and age, based upon her  
12 general participation in the US labor force or  
13 more specifically based on her work experience as  
14 a lawyer or as an individual working in the  
15 manufacturing setting in a professional capacity.

16 So the last two categories may be more  
17 specific but the other categories have relevance  
18 to Ms. Fischman. And these provide proxies,  
19 which the Department of Labor uses all the time,  
20 and we see discussed in the news all the time  
21 especially during the COVID world that these  
22 provide guide posts to what we expect individuals  
23 similar to Ms. Fischman to have found  
24 reemployment by.

25 Q. Have you concluded your response?

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2 A. I have, Mr. Berman.

3 MS. PRIMAVERA: Sorry to interrupt. How  
4 much time have we gone today, Ms. Reporter?

5 (Whereupon, an off-the-record discussion  
6 was held.)

7 MR. BERMAN: I think we're getting to  
8 the end of this. I just want to ask a few  
9 more questions.

10 Q. Are you familiar with concept of a  
11 confidence interval, Mr. Staller?

12 A. Yes.

13 Q. Have you identified any confidence  
14 interval in connection with your estimate of how  
15 long it should have taken Ms. Fischman to find  
16 re-employment?

17 A. Well, by a confidence interval and what  
18 we know from Table Data B and the date captured  
19 by the Department of Labor, if we look at the  
20 lowest percentage but based upon vocation that  
21 67.9 percent, so we know of the entire population  
22 of individuals that are identified in management,  
23 professional and related occupations, within a  
24 half year, 26 weeks, 68 percent of those  
25 individuals found re-employment.

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2 If we look with regard to her industry  
3 training -- I shouldn't say "training" but  
4 industry based experience -- again, not a  
5 confidence interval -- I imagine how you're using  
6 that term -- there's 74 percent of the population  
7 that were unemployed were re-employed within a  
8 half year.

9 So by statistical standards, a  
10 majority -- an overwhelming majority within those  
11 two criteria, found work within, at most, half  
12 year.

13 There's nothing to suggest that in Ms.  
14 Fischman's background, training or experience she  
15 lacked any competency or ability in her skills  
16 that would prevent her from being an outlier for  
17 the minority of that population.

18 Q. Have you completed your response?

19 A. I have, Mr. Berman.

20 Q. Have you made any calculation of the  
21 predictive power of your estimate of how long it  
22 should have taken Ms. Fischman to find  
23 re-employment.

24 A. I don't understand how you're using the  
25 term "predictive power."

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2 Q. Have you made any mathematical  
3 determination concerning the degree to which your  
4 estimate accurately predicts results?

5 A. That's an impossible -- it's a question  
6 with an impossible outcome. Ms. Fischman --  
7 obviously, she hasn't obtained employment except  
8 for working with her mother in the real estate  
9 field. By all accounts from her supplied data,  
10 she stopped seeking work and my opinion goes  
11 towards the opportunities that existed for Ms.  
12 Fischman in the New York Metro area for lawyer  
13 positions -- legal positions and from all  
14 accounts from the published data we have  
15 available from the cusp that would be most  
16 relevant to Ms. Fischman. The empirical data  
17 concludes that over three -- or just at three  
18 quarters of that population obtained  
19 re-employment at 27 weeks. On the low end, two  
20 thirds of the population of similar situated  
21 co-force found re-employment within 27 weeks. So  
22 the predictive power, you can't test. That's  
23 based upon what has transacted and of a similar  
24 situated co-force, we know what transacted and  
25 how they found re-employment within a specific

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2 time period.

3 Q. Have you completed your response?

4 A. I have.

5 Q. Do I understand correctly that when you  
6 made an estimate of the time that it would take  
7 for all workers to find re-employment, right --  
8 first category here, correct?

9 A. Yes.

10 Q. Do I understanding correctly that when  
11 you make that estimate, you cannot -- you can  
12 look back later on your estimate and see whether  
13 it had any predictive power?

14 MR. FORTINSKY: Objection.

15 Q. Do understand my question?

16 A. (No verbal response.)

17 Q. If you take a population -- the  
18 population of this category, right -- and you  
19 make an estimate that it will take between  
20 23.7 -- it will take on average -- or I guess  
21 you're using "mean" here, that's the average,  
22 correct?

23 A. There's both there, Mr. Berman.

24 Q. You get the mean and the median, right?

25 A. That's right. There's both there.

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2 Q. So is there any statistical analysis of  
3 the predictive power of an estimate of this type  
4 on predicting future outcome?

5 MR. FORTINSKY: Objection.

6 A. Rephrase the question. You used  
7 "predictive" three times one sentence.

8 Q. When you use data of this type to make  
9 an estimate, how long it would take a population  
10 to find re-employment, in the real world can you  
11 then later go and look at that population and  
12 identify how many of them actually found  
13 re-employment in the estimated time period?

14 MS. PRIMAVERA: Objection.

15 A. I'm just -- maybe I'm confused by your  
16 question. I probably can't answer it -- but  
17 that's what the mean and median are showing. In  
18 the far column on the right-hand side, that's the  
19 predictive power, of all individuals that had  
20 separated from employment in January of 2017,  
21 they found re-employment within 9.6 weeks in the  
22 first row -- just to answer your question -- and  
23 9.6 weeks or 23.7 weeks. So I'm confused by when  
24 you say "predictive power" because this is  
25 recorded -- we're not estimating it -- this is

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2 what transpired. We're not going to estimate  
3 what that population did, we're reporting what  
4 that population did.

5 Q. This is historical data, correct?

6 MS. PRIMAVERA: Objection.

7 A. Correct, this is reported data in that  
8 time period. So we're looking back now in the  
9 period of January of 2017 what actually  
10 transpired. I don't see the relevance of  
11 prediction.

12 Q. Let me rephrase the question.

13 Has there been any statistical analysis of  
14 whether the historical data predicts future  
15 results?

16 A. The duration of unemployment's dynamics,  
17 it's changing months and every year. So I don't  
18 understand that question.

19 Q. So does that mean that the duration --  
20 the historical duration of unemployment does not  
21 predict how long it would take someone to find  
22 re-employment in the future?

23 MS. PRIMAVERA: Objection.

24 A. If I were to use this data as applied to  
25 Ms. Fischman or to anybody as of July or August

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2 1st, 2021, I would not use the January dataset.  
3 But fortunately for us, we know Ms. Fischman  
4 separated from employment in January of 2017 --  
5 February of 2017 and we had the benefit of  
6 knowing what actually transpired from similarly  
7 situated individuals based upon four cuts of  
8 Department of Labor data that records -- not  
9 predicts -- but records similar to Ms. Fischman  
10 when they lost their jobs in that time period.  
11 And to Ms. Fischman what do those individuals  
12 actually experience in the period of unemployment  
13 and what percent of that population got  
14 re-employed -- and that's what that far right  
15 hand column identifies. So we don't need to  
16 predict.

17 Ms. Fischman was part of that population  
18 in February of 2017 and her could work  
19 experienced this immediate and median.  
20 Obviously, with Ms. Fischman not finding  
21 employment, she would be outside the mean and  
22 median periods. But as that central point of  
23 central tendency represents, half received  
24 employment within those time periods.

25 Q. Okay. So this data for the duration of

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2 unemployment in January of 2017, is that looking  
3 at the results from 2017 onward or is that  
4 looking for results up to 2017?

5 A. (No verbal response.)

6 Q. Does that make sense?

7 A. Yes. When did they separate?

8 Q. Yes. Like is this chart looking at how  
9 long it took people to find employment taken at a  
10 point in time in January of 2017 or is this  
11 looking at unemployment that started in  
12 January of 2017 and looking at it at some later  
13 date?

14 A. It's looking at people that separated in  
15 January of 2017 and what it took those  
16 individuals.

17 Q. So when is it measured to -- if they  
18 separated in January of 2017, when it is measured  
19 to? When does it stop tracking it?

20 A. So with regard to the mean -- well,  
21 27 weeks would be the second week of July -- or  
22 actually it would be through January -- it would  
23 be through January so it would be through the  
24 first week of August of that respective year,  
25 '17.

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2 They stopped tracking because the  
3 mean -- the mean gets pulled out by the details,  
4 quick hires and no hires. After a certain time  
5 point we stop tracking from the mean. I forget,  
6 it's like 100 weeks -- I forget the period.

7 Q. 100 weeks is a little less than two  
8 years, right, that would be until December of  
9 2019, is that correct?

10 A. 100 weeks with regard to the case  
11 specific for Ms. Fischman, yes.

12 Q. 100 weeks from January of 2017 is  
13 approximately December of 2019, do we agree?

14 A. Approximately, yes. As an  
15 approximation, yes.

16 Q. If you were looking at this table in  
17 December of 2019, would there be any material  
18 difference between what it says now and what it  
19 says in December of 2019?

20 A. Not for the January of 2017 data because  
21 that's already established, no.

22 Q. That's my question. Thank you. So if  
23 you were looking at this table in December of  
24 2019, would that enable to you to make a  
25 prediction in December of 2019 about how long you

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2 expect it to take someone in the manufacturing  
3 category to obtain re-employment if they were  
4 separated in December of 2019?

5 A. No. You would use the December -- you  
6 would have to -- the December -- if they were  
7 separated in December of '19, you would not use  
8 the January of 2017 data. The data from the  
9 January of 2017 dataset would be the stragglers  
10 that are --

11 Q. So if you were looking at the January of  
12 2017 data in Table B -- if you were looking at  
13 that information in December of 2019, is it  
14 correct to say that you would not be able to use  
15 that data to predict how long it would take  
16 someone who was separated from employment in  
17 December of 2019, you wouldn't be able to use  
18 that to figure out an estimate of how long it  
19 would take them to find reemployment; is that  
20 correct?

21 A. I'm confused by your question.

22 Q. Okay. If you have -- if it was -- if  
23 you were looking at Table B in December of  
24 2019 -- I think you told me the data would be  
25 substantially the same as it is now, correct?

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2 A. Right, it would be the exact same data  
3 because this data been stagnant since January of  
4 '17.

5 Q. So it's stagnant data as of the point in  
6 time of December of 2019, correct?

7 A. 2017.

8 Q. The 2017 -- the January of 2017 data is  
9 stagnant as of December of 2019, isn't it?

10 A. Yes. I understand your question now.  
11 Correct.

12 Q. We have a snapshot in time of  
13 December of 2019 that has this data in it that is  
14 presented in Table B, right?

15 A. If I looked up the duration of  
16 unemployment as of January of 2017, two years ago  
17 in, January of 2019, you would get the status  
18 set.

19 Q. I want to stick with December of 2019,  
20 if that's okay. If you looked up this data in  
21 December of 2019, it would say the same thing it  
22 says now, right?

23 A. The data published in Table B, yes.

24 Q. If you had the data as published in  
25 Table B, in December of 2019 would you be able to

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2 use that data to make any prediction about how  
3 long you would expect it to take someone in the  
4 manufacturing category who was severed from their  
5 employment in December of 2019 to find  
6 re-employment?

7 A. You can use this dataset in your  
8 hypothetical but there would be more updated  
9 data -- more contemporaneous to that separation.  
10 In your hypothetical, if this person separated in  
11 the manufacturing industry in December of '19,  
12 you would not use the data from Table B.

13 Q. So you wouldn't be able to use the --

14 A. I wasn't done, Mr. Berman.

15 Q. Okay.

16 A. You would be using -- I'm not sure how  
17 you're using it or why you're using because your  
18 hypothetical is not complete -- but if you're  
19 just looking at the data itself, there would be  
20 data contemporaneous to that person's separation  
21 in December of '19 that you would not have to  
22 rely upon the January of 2017 data published in  
23 Table B if we were trying to explore how long  
24 that newly separated person to have unemployment  
25 for. There would be data surrounding that

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2 separation in a time period context.

3 Q. Have you completed your response?

4 A. I have now, Mr. Berman.

5 Q. In making your estimate of how long you  
6 would have expected Ms. Fischman to take to find  
7 re-employment, did you consider the impact of her  
8 job references?

9 A. Not specifically, no.

10 Q. Do you know whether there's a  
11 relationship between the duration of unemployment  
12 and your job references as an applicant?

13 A. I don't think one can draw a direct  
14 correlation. I think that will go into multiple  
15 factors and attributes and the dynamics of the  
16 job applicant, job posting, the presentation of  
17 the person, their experience and the job they're  
18 seeking. I don't think it's as simple as saying  
19 one to one.

20 Q. That's fair. Is it fair to say that one  
21 of the factors to be considered within the  
22 duration of unemployment would be the quality and  
23 quantity of the person's references?

24 MS. PRIMAVERA: Objection.

25 A. I can't say that the references or lack

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2 thereof draws a direct relationship to the  
3 duration of unemployment, no. It's much more  
4 dynamic than what another person says about them.

5 Q. You consider the number of references  
6 Ms. Fischman had in estimating how long you would  
7 expect her to find re-employment, correct?

8 A. I did not consider the number of  
9 references, no.

10 Q. Did you consider whether she had a  
11 reference available from Mitsubishi in connection  
12 with your determination of her duration of  
13 unemployment?

14 MS. PRIMAVERA: Objection.

15 A. I don't know about any references she  
16 may or may not have had from Mitsubishi so it  
17 wasn't considered.

18 Q. In connection with the job listings we  
19 saw in the forensic job stats database, do you  
20 have any information about the market share of  
21 the different job boards that are referenced in  
22 that dataset?

23 MS. PRIMAVERA: Objection.

24 A. I'm not sure what market share you're  
25 referring to.

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2 Q. Well, there are different job boards  
3 listed in the job postings within the dataset you  
4 looked at, right?

5 A. Yes.

6 Q. There are many different job sites  
7 listed in those job postings, correct?

8 A. Yes.

9 Q. Do you have any information concerning  
10 the market share that those various job search  
11 sites have in the marketplace?

12 A. No, not off the top of my head.

13 Q. Is there any field within the discipline  
14 of forensic economics that considers the market  
15 share of job search boards?

16 A. Not that I'm aware of.

17 Q. You testified earlier you have some  
18 level of knowledge concerning a plaintiff's duty  
19 to mitigate, correct?

20 A. Yes.

21 Q. Are you aware what the doctrine of  
22 lowering your sites?

23 A. Generally.

24 Q. Did you complete your response?

25 A. I did, yes.

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2 Q. Did you consider that doctrine in your  
3 assessment of the mitigation of plaintiff's  
4 damages?

5 MR. FORTINSKY: Objection to form.

6 A. To the extent she just transitioned her  
7 career into real estate.

8 Q. Other than that, did you factor in the  
9 doctrine of lowering your sites?

10 A. Typically my experience of the doctrine  
11 of lowering sites where it relates to the  
12 residual earnings level of an individual that  
13 they can't find the same level of pay, lower  
14 their sites with regard to compensation. I'm not  
15 familiar with it with regard to job search  
16 activity, with regard to the efforts. But as far  
17 my experience with it is with regard to the  
18 residual earning ability of a person.

19 Q. Are you familiar with O\*NET?

20 A. Yes.

21 Q. Do you consult O\*NET in connection with  
22 this assignment?

23 A. No. Again, my experience with O\*NET is  
24 with regard to the specific level of earnings,  
25 not so much of opportunities or employment

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2 opportunities.

3 Q. Okay. Is it fair to describe O\*NET as a  
4 content model?

5 MS. PRIMAVERA: Objection.

6 A. I'm not sure how you're using content  
7 model. It's database. I don't -- most of  
8 databases are content.

9 Q. Do you know whether the O\*NET database  
10 incorporates knowledge, skills and abilities?

11 MS. PRIMAVERA: Objection.

12 A. I didn't use it in this case so I didn't  
13 look at it.

14 Q. Did you conduct any analysis of the  
15 knowledge, skills and abilities applicable to Ms.  
16 Fischman's positions that she was separated from?

17 THE WITNESS: Can you repeat the  
18 question.

19 (Whereupon, last question read back.)

20 A. Based upon her resume and answer to  
21 interrogatories, I was aware of her work at  
22 Mitsubishi. I'm not sure how else you're using  
23 it in that question.

24 Q. Did make -- are you familiar with the  
25 concept of transportability of skills?

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2 A. Yes.

3 Q. Did you make any analysis of the  
4 transportability of the knowledge, skills and  
5 abilities of Ms. Fischman's former jobs?

6 A. Yes, as outlined in her CV and that's I  
7 think exactly what shows in page seven of my  
8 report.

9 Q. That's what you would look for in an  
10 analysis of knowledge, skills and abilities?

11 A. Well, as earlier testified to, I'm not a  
12 vocational expert. But with regard to your  
13 question, when you say transportability, I mean,  
14 typically it's referred to as transferrable skill  
15 set. You see in her resume all of her background  
16 and experience with regard to providing legal  
17 counsel and advice on various legal matters at  
18 either corporations or in private firms and  
19 that's what the graph represents on page seven of  
20 my report. When you search, you control for some  
21 of her experience -- I'm not suggesting Ms.  
22 Fischman -- because that would be outside my area of  
23 expertise -- that she should become a financial  
24 adviser or she should become a manufacturing  
25 plant supervisor, I'm taking what she identified

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2 of her resume, key words, key terms that she  
3 identified in her resume and using that through  
4 the forensic job stats dataset to define relevant  
5 and applicable job she could have sought based  
6 upon what identified by Ms. Fischman. I'm not  
7 transferring her into a different industry or  
8 occupation.

9 Q. So you're not expressing any opinions  
10 about the similarity of Ms. Fischman's job to any  
11 other jobs, correct?

12 MS. PRIMAVERA: Objection.

13 A. Correct. I think this was discussed  
14 around your questioning of science and science  
15 and more science. But similarity, correct.

16 What I've identified here for Ms.  
17 Fischman and what I've opined to is the number of  
18 opportunities in the legal market that existed,  
19 whether similar to Mitsubishi or Raytheon Company  
20 or what she did in private practice, I'm not  
21 trying to overlap those. It's a key term  
22 analysis based upon what she has identified in  
23 her key bullet points on her three page resume  
24 with regard to key words that are used to filter  
25 out and identify the most relevant jobs in the

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2 New York Metro area for lawyers from February 1,  
3 2017 through April of 2020.

4 Q. Okay. So when you used the term  
5 "similarly situated" before, you weren't  
6 referring to assessing overlap between jobs,  
7 right?

8 A. Correct. My role here as a labor  
9 economist is identify the labor market that  
10 existed and the job opportunities that existed.  
11 I'm not here to say job on page 300 had nine of  
12 the ten attributes that she had at Mitsubishi as  
13 acting general counsel or chief compliance  
14 officer. My role here is to say there are other  
15 jobs that could have been pursued and  
16 investigated by Ms. Fischman after her date of  
17 separation through the current date to show are  
18 her 106 contacts reasonable or unreasonable based  
19 upon what the marketplace -- it's a benchmark  
20 study that indicates were her efforts based upon  
21 her supplied documentation exhausted and complete  
22 or was there more work and more of the labor  
23 market she could have pursued as far as legal  
24 opportunities.

25 Q. In making those determinations, did you

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2 consider the length of time that any of these  
3 jobs were posted?

4 A. No. My experience -- these jobs tend to  
5 post per 90 days and they may be reposted and  
6 that's why I identify them as opportunities. To  
7 the extent that an employer would repost it, it  
8 was still an opportunity that if Ms. Fischman  
9 didn't see it in February of '18, she could have  
10 applied for it in March of '18. So I identified  
11 them as opportunities.

12 Q. Did you take into account that a number  
13 of these don't list the poster, they say poster  
14 not listed, right?

15 A. That's true.

16 Q. Did you factor that into the analysis?

17 A. No. That would be an opportunity for  
18 Ms. Fischman to explore. Because it's not posted  
19 doesn't mean it wouldn't be a relevant employer  
20 for her to consider.

21 Q. Did you factor in whether Ms. Fischman  
22 had enough experience for each of the jobs  
23 posted?

24 MR. BERMAN: I hear somebody in the  
25 background.

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2 Q. Did you take into account Ms. Fischman's  
3 experience in connection with the jobs that were  
4 posted, whether she had enough experience?

5 THE WITNESS: I think that prior voice  
6 was Mr. Berman's AI.

7 MR. BERMAN: I've been accused AI  
8 before, I won't deny that.

9 Q. Did you hear my question?

10 A. Just repeat it, please.

11 Q. Did you take into account whether  
12 plaintiff had enough experience to qualify for  
13 the jobs that were posted?

14 A. The criteria -- if you're using it to  
15 say experience not based upon a threshold number  
16 of years, obviously, Ms. Fischman has been a  
17 licensed attorney since 1996. So it's experience  
18 or the relevance would be based upon the search  
19 terms that's identified on page seven.

20 Q. Did you take into account whether  
21 plaintiff had too much experience for any of the  
22 jobs listed?

23 A. No. Even if they wanted an entry level  
24 attorney -- again, this is called the hidden job  
25 market where it's worth meeting that employer --

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2 maybe this job wouldn't be right but they would  
3 accept her resume or put it on hold for when the  
4 right position comes up or they would place  
5 knowing she's good a candidate that they don't  
6 want to pass up. So I do not exclude just if she  
7 was over qualified. Again, it's about contacts  
8 with employers, getting out as many opportunities  
9 as possible. You have to swing the bat to get a  
10 home run. These are opportunities for her to  
11 swing the bat.

12 THE WITNESS: We're at 4:10. We're well  
13 over four hours now, the time I reserved for  
14 the deposition.

15 If you have a couple more minutes, I'm  
16 happy to do that but otherwise --

17 MR. BERMAN: I'm just about finished  
18 here. I appreciate you indulging me. I do  
19 want to wrap this up and I think we're just  
20 about there.

21 Q. Just to clarify, you also considered  
22 temporary assignment jobs, right?

23 A. Yes, I did. Again, get her foot in the  
24 door if that was an appropriate opportunity to  
25 explore.

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2 Q. And you also considered jobs that were  
3 paying significantly less than what she was  
4 making in her prior employment, correct?

5 MS. PRIMAVERA: Objection.

6 A. The posted -- most jobs don't have  
7 dollars posted, there's some that do. Right, I  
8 believe, some of them may be lower than what her  
9 annual learning were. Again, I don't have her  
10 tax returns. But, yes, as far as -- some  
11 opportunities may have had lower hourly rate than  
12 what Ms. Fischman was making. But, again, an  
13 opportunity she should have explored.

14 Q. You included, for example, document  
15 review assignments, right?

16 MS. PRIMAVERA: Objection.

17 A. Yes.

18 Q. Those are typically engagements that pay  
19 lower hourly rates than anything that compares to  
20 a general counsel rate, right?

21 MS. PRIMAVERA: Objection.

22 MR. BERMAN: I knocked the camera over.

23 Sorry.

24 A. Generally, yes. I can't say in every  
25 matter, it's going to depend and that's the whole

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2 point of applying, to explore that opportunity  
3 and see what it pays and what other opportunities  
4 for that firm will be available for some of the  
5 credentials for Ms. Fischman.

6 Q. This analysis is within the context of  
7 her duty to mitigate, correct?

8 MS. PRIMAVERA: Objection.

9 A. I don't under -- my report is a  
10 mitigation report so I don't understand that  
11 question as it may be something different.

12 Q. I'll try to clarify it and I think we're  
13 probably done.

14 You mentioned before that your generally  
15 aware of the duty to mitigate, right?

16 A. Yes.

17 Q. Do you know whether a terminated  
18 employee's duty to mitigate includes applying to  
19 jobs that pay significantly less than the job  
20 they have just been severed from?

21 A. So that gets into that lower site  
22 doctrine. That after a period of time if you're  
23 not successful in your exhaustive search for a  
24 certain occupation or job at certain earnings  
25 level, one should turn to a lower site.

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2 I don't think Ms. Fischman really got to  
3 that level, to be honest, to the extent that what  
4 I'm establishing here showing that there were  
5 multiple opportunities to the extent that some  
6 have lower jobs on a possible per hourly basis or  
7 per annum basis. Those are still contacts Ms.  
8 Fischman would want to have pursued, to have  
9 those meetings and discussions with the employer.

10 Q. So just to make sure I understand, isn't  
11 it correct that you included jobs or job postings  
12 for positions that paid substantially less than  
13 Ms. Fischman was earning with without removing  
14 any based upon the time period of those posting,  
15 right, so you included lower paying jobs from  
16 January 30th onward, correct?

17 MS. PRIMAVERA: Objection.

18 A. So, again, I haven't seen Ms. Fischman's  
19 tax returns. And with regard to lower hourly  
20 rates, some were per diem jobs that may pay than  
21 what she made. It doesn't mean it would have  
22 been a relevant job or she would not demanded a  
23 higher hourly rate. What's listed there is not  
24 the number that's necessarily settled upon in  
25 reaching an employment agreement with that

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2 subsequent employer. That's the whole reason of  
3 meeting, showing your credentials and then  
4 negotiating a fair salary.

5 Q. Isn't that process entirely speculative?  
6 For example, if there is a document review  
7 position posted, the employer is not going to  
8 negotiate to hire you as general counsel, are  
9 they?

10 MS. PRIMAVERA: Objection.

11 Q. That's speculation, right? It could  
12 happen but it's probably not going to happen,  
13 right?

14 MS. PRIMAVERA: Objection.

15 A. Right. I'm not suggesting she become  
16 general counsel for that organization. Can she  
17 become a senior associate or a senior team leader  
18 on that project based upon wide breath of  
19 experience and command more than the hourly rate  
20 identified there, I think that's completely  
21 possible and not speculation.

22 Ms. Fischman has a fantastic resume with  
23 loads of experience and would help many employers  
24 and many legal situations. So the fact that you  
25 might apply to a job that says temporary, I don't

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2 think that's prohibitive of anything.

3 Q. Isn't that presuming that there's a  
4 different job available than the one she applied  
5 to?

6 MS. PRIMAVERA: Objection.

7 Q. I mean, it's not the job posted, right?  
8 If the job posted is a document review attorney,  
9 you're saying, I guess, it's within the realm of  
10 possibility that she can negotiate for some other  
11 job. But doesn't that presume there's an  
12 opening?

13 A. No, it could mean that she takes the  
14 document review job for the short term based upon  
15 the conversation she could have had with that  
16 employer but she did not with that employer but  
17 could have pursued and got her foot in the door  
18 and did the work on the specific ad she could be  
19 qualified for it. Again, we don't know if it's  
20 exactly a lower rate -- you're suggesting it  
21 is but we don't know -- and then she could have  
22 gone to other opportunities after demonstrating  
23 her highly trained skill set she's acquired since  
24 1996.

25 MR. BERMAN: I have no further questions

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2 for you at this time, Mr. Staller.

3 I want to thank you for your time. I

4 tender the witness.

5 MS. PRIMAVERA: I have no questions for

6 the witness.

7 MR. FORTINSKY: I have no questions for

8 the witness.

9 THE REPORTER: Would anyone like to  
10 order a copy of the transcript?

11 MS. PRIMAVERA: Copy, please.

12 MR. FORTINSKY: No copy.

13 (Whereupon, the examination of this  
14 witness was concluded at 4:15 p.m.)

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## A C K N O W L E D G M E N T

3

4 STATE OF NEW YORK )

: ss

5 COUNTY OF )

6

7

8 I, CHAD STALLER, hereby certify that I

9 have read the transcript of my testimony taken

10 under oath in my deposition of July 30, 2021,

11 that the transcript is a true, complete and

12 correct record of my testimony, and that the

13 answers on the record as given by me are true and

14 correct.

15

16

17

\_\_\_\_\_  
CHAD STALLER

18

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20 Signed and subscribed to before  
me, this day  
of , 2021.

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24 \_\_\_\_\_  
Notary Public, State of New York

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## I N D E X

3

WITNESS

EXAMINATION BY

PAGE

4

Chad Staller

Mr. Berman

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6

## E X H I B I T S

7

PLAINTIFF'S

PAGE

8

Staller Exhibit 1

Curriculum vitae

10

9

Staller Exhibit 2

Report

24

10

Staller Exhibit 3

Google search

104

11

12

## REQUESTS/PRODUCTION

13

PAGE 25 - Fee schedule

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C E R T I F I C A T E

I, TONI MUSACCHIA, a Notary Public in and  
for the State of New York, do hereby certify:

THAT the witness whose deposition is  
hereinbefore set forth, was duly sworn by me and

THAT the within transcript is a true  
record of the testimony given by such witness.

I further certify that I am not related,  
either by blood or marriage; to any of the  
parties to this action; and

THAT I am in no way interested in the  
outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set  
my hand this 30th day of August, 2021.

*Toni Musacchia*

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TONI MUSACCHIA



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|--|--|---|
| <b>A-R-S-E-N-S</b> 118:11<br><b>a.m</b> 1:15<br><b>abilities</b> 169:10,15 170:5,10<br><b>ability</b> 8:16,20 57:6 80:2 91:23<br>154:15 168:18<br><b>able</b> 39:7 115:4 119:14 122:6 123:8<br>162:14,17 163:25 164:13<br><b>abreast</b> 56:10<br><b>academic</b> 151:7<br><b>accept</b> 175:3<br><b>accepted</b> 22:7 112:10<br><b>access</b> 78:6<br><b>accommodate</b> 8:4<br><b>account</b> 173:12 174:2,11,20<br><b>Accountancy</b> 14:4,6,9<br><b>accounts</b> 155:9,14<br><b>accreditation</b> 12:19<br><b>accreditations</b> 13:9<br><b>accurate</b> 26:16<br><b>accurately</b> 8:17,21 54:21 69:16<br>155:4<br><b>accused</b> 174:7<br><b>acquired</b> 45:3 46:15 81:10 180:23<br><b>acronym</b> 17:15 89:24 109:12<br><b>acting</b> 150:8,9 172:13<br><b>action</b> 184:12<br><b>activities</b> 9:9 42:25 43:4,13,16,18<br>48:25 49:22 50:5,14 51:11,23<br>52:2,16 69:11 95:19 111:13<br><b>activity</b> 43:7 168:16<br><b>actual</b> 81:24 112:2 134:15<br><b>acute</b> 69:14<br><b>ad</b> 80:25 135:4 180:18<br><b>Adam</b> 18:6<br><b>Adams</b> 18:7<br><b>add</b> 34:2<br><b>addition</b> 8:8 17:24 129:2 136:12<br>150:2<br><b>additional</b> 17:25 26:21 27:6 28:4<br>43:8 53:3 79:23 89:4 100:6,17<br><b>address</b> 5:24<br><b>adequately</b> 53:20<br><b>Adjunct</b> 58:22<br><b>administer</b> 4:8<br><b>administered</b> 89:5<br><b>administrative</b> 33:15,18 34:3<br><b>admissibility</b> 133:22<br><b>admission</b> 16:18 79:25 90:18<br><b>admissions</b> 78:24,25<br><b>admitted</b> 89:7 90:19 91:4,10,15<br><b>ads</b> 81:2 134:13,18,23 135:2 146:14<br><b>advice</b> 170:17<br><b>adviser</b> 170:24<br><b>advocacy</b> 13:17,21 60:11<br><b>affect</b> 8:16,20<br><b>against-</b> 1:6<br><b>age</b> 44:17 128:2,21 142:14,25 149:7 | 151:10,16 152:11<br><b>Agency</b> 4:13<br><b>agent</b> 53:12<br><b>ago</b> 25:23 61:6 64:15 105:11 127:8<br>128:5 163:16<br><b>agree</b> 50:11 51:4 88:24 89:4 90:4<br>104:15,19 115:22 145:5 161:13<br><b>agreed</b> 3:4,10,15 4:3<br><b>agreement</b> 20:10,12,16,17 30:13,14<br>178:25<br><b>AI</b> 109:6,9,12 174:6,7<br><b>Allison</b> 110:6<br><b>allow</b> 24:23 57:23 96:20<br><b>allowed</b> 120:4,11<br><b>America</b> 1:8 2:11<br><b>amount</b> 23:25 98:6 99:11 113:11<br>124:25<br><b>analyses</b> 37:9,11 38:5 40:15<br><b>analysis</b> 16:3,3 17:5 19:12 22:18<br>32:25 35:23 36:6,8,19,20,25 37:6<br>39:13 40:3 54:7 55:18,20,21,22<br>56:2,24 61:15 68:8,11,19 69:5<br>84:20 115:13,20 118:23 119:3<br>136:16 157:2 158:13 169:14<br>170:3,10 171:22 173:16 177:6<br><b>analyst</b> 13:11,14<br><b>annual</b> 176:9<br><b>annum</b> 178:7<br><b>answer</b> 6:18,24 7:9,16 27:24 31:10<br>32:15 35:20 42:21 54:20 56:18<br>65:2,15 67:4,14,20 68:24 69:3<br>71:5 73:17 75:3 78:22 81:19,20<br>81:21 84:11,13 86:13 89:12 91:7<br>97:3 100:4,24,25 101:16,19 102:2<br>102:4,7 103:5,13 106:3,14,17<br>107:8,25 108:4 113:11 115:7<br>125:9 129:13 130:2 132:21<br>133:11 135:22 146:21 157:16,22<br>169:20<br><b>answered</b> 129:23 141:8 146:23<br><b>answering</b> 6:9 75:10 101:22<br><b>answers</b> 107:13 182:12<br><b>anticipate</b> 6:25<br><b>anybody</b> 158:25<br><b>apologize</b> 107:20<br><b>appear</b> 44:4 124:12<br><b>appearing</b> 5:10<br><b>appears</b> 78:22 79:3,5 85:23 108:17<br>110:4,7,8 111:2,25 112:2<br><b>appendices</b> 24:22<br><b>Appendix</b> 25:15,17,24<br><b>applicable</b> 79:21 120:25 147:11<br>169:15 171:5<br><b>applicant</b> 165:12,16<br><b>application</b> 19:8 56:23 65:22 66:7<br>81:11 96:10 115:21<br><b>applications</b> 43:4<br><b>applied</b> 14:13 18:13 19:12 55:18 | 63:8 70:11 71:14 76:8 79:22<br>95:22 96:4,14,22 115:13,17 116:7<br>116:17 117:4,6,10,15 118:6,16<br>128:16 134:12 158:24 173:10<br>180:4<br><b>apply</b> 75:22 80:2 81:13 82:10<br>179:25<br><b>applying</b> 18:25 151:21 177:2,18<br><b>appointment</b> 56:14<br><b>appointments</b> 58:20<br><b>appreciate</b> 175:18<br><b>appropriate</b> 82:15 83:3,5 84:14<br>86:10 101:17 102:5 138:17 139:8<br>175:24<br><b>appropriately</b> 54:22<br><b>approximate</b> 20:7 33:3 37:4,23<br><b>approximately</b> 23:6 37:9 38:5<br>41:24 51:12 161:13,14<br><b>approximation</b> 20:8 33:10,25 37:10<br>37:25 38:13 40:3 161:15<br><b>approximations</b> 38:8<br><b>April</b> 45:4 47:19 145:16 172:3<br><b>area</b> 18:9 45:5,22 47:4 75:16 77:3,4<br>77:22 155:12 170:22 172:2<br><b>areas</b> 18:12<br><b>arena</b> 37:5<br><b>array</b> 69:11<br><b>arrive</b> 51:25 52:23 54:11<br><b>Arsens</b> 118:10,17 119:6,24 120:17<br>123:14<br><b>article</b> 101:7,12 104:16,18 105:5<br>106:2 108:20,23 109:2,3,5,7,14<br>109:15,16,21,22 110:4,22,23,25<br>111:14,15,17,22,24 112:14,25<br>113:3,6,10,16,17<br><b>articles</b> 98:5,24 99:17,19 101:2,7<br>103:4,17,19 105:8,24 106:23,25<br>109:25<br><b>artificial</b> 109:10,19 110:8<br><b>arts</b> 59:21 61:2<br><b>ascertain</b> 105:23 133:16 134:3<br>137:11<br><b>aside</b> 26:5 129:20<br><b>asked</b> 31:12,15 32:5 34:24 35:16,21<br>35:22 36:7 86:14 90:9,13 94:12<br>96:4 100:3 103:9 129:22 142:4<br><b>asking</b> 57:7,8 62:3 71:25 135:23<br>141:10 145:8<br><b>aspect</b> 61:13<br><b>assessing</b> 143:7 172:6<br><b>assessment</b> 41:4,9 71:12 111:20<br>168:3<br><b>assessments</b> 70:15,17,19,23,25 71:8<br>71:10,15,18 144:4<br><b>assigned</b> 30:15<br><b>assignment</b> 34:25 168:22 175:22<br><b>assignments</b> 37:20 41:3,22 176:15<br><b>assistant</b> 25:19 136:21 |

**associate** 179:17  
**associated** 139:18 145:3  
**assumed** 109:11  
**Assuming** 52:14 91:5  
**assumptions** 32:5,9  
**astronomy** 72:5  
**attached** 25:14 146:21  
**attachment** 25:4,20 146:21  
**attempt** 138:24  
**attention** 48:23 78:20 114:2,6 147:7,15  
**attorney** 6:5 15:20 56:19 73:18,20 74:6,7 75:16 76:2 79:11 81:21 88:10 89:6,20 90:6 92:25 93:3,10 93:15,22 97:4 119:13 122:4 135:11 144:4,6,23 145:6 174:17 174:24 180:8  
**attorneys** 1:20 2:3,7,11,15 7:13 31:7 79:21 83:21 93:7  
**attributes** 151:22 165:15 172:12  
**audible** 6:14  
**August** 158:25 160:24 184:16  
**author** 11:14 111:23  
**authored** 108:20,24 109:6,15,18 112:2,9,11  
**authoring** 144:25  
**available** 12:11 36:17 65:6,12 111:18 138:23 139:6 155:15 166:11 177:4 180:4  
**Avenue** 2:8,16  
**average** 44:15 52:3,7,8,9,20,24 53:24 143:4,5 151:16 156:20,21  
**averaged** 51:21 52:15  
**averaging** 53:6  
**award** 64:3,23 65:11 66:15,19  
**award-winning** 64:6  
**awarded** 65:2 66:2  
**awards** 16:19,20 17:3 63:17,18,23 64:4,13 65:4 66:13,16  
**aware** 23:15 63:16 66:15 67:25 70:12,14,22,24 71:6 72:21 80:5 80:10 99:17 112:16 119:9 120:9 123:12,20,23,24 124:2,3,6,7,16 125:15 141:24 142:7 167:16,21 169:21 177:15  
**awareness** 112:23

## B

**B** 76:7 114:8 138:19 139:12 141:17 141:23 143:15 145:14 147:9 148:2,3,8 150:17 153:18 162:12 162:23 163:14,23,25 164:12,23 183:6  
**back** 30:7,14,21 31:24 32:4 55:5,7 55:11 69:22,24 70:5 74:9,11 78:4 81:25 82:2 84:8,10,12 86:15,16 89:22 94:25 106:10,12 108:3,6,8 113:2,20 116:3 121:24,25 122:2

125:4,5 129:10,17 130:3,5 135:4 142:17,19 148:2,2 156:12 158:8 169:19  
**background** 14:13 15:6,21,23 54:4 110:15 111:3 145:2,4 146:24 154:14 170:15 173:25  
**backgrounds** 149:13  
**backpay** 18:17  
**bad** 135:22,22  
**balance** 34:3 108:21 110:15 113:2  
**balancecareers.com** 101:7 111:18  
**ballpark** 37:24 38:19 42:2  
**Baltimore** 59:17 60:18,19 62:22,24  
**bank** 96:16  
**bar** 15:19 78:23,25 79:23 81:12 83:21 85:25 86:6,20 87:3,18,23 88:3,6,7,7,13,18 89:2,5,7,9,10,12 89:16 90:2,18,23,23 91:4,6,8,10 91:15 92:8,13 94:10 104:6,25 146:14  
**barrier** 83:16  
**bars** 15:20  
**base** 110:13  
**based** 15:2 17:3 31:16 35:24 36:6 42:13,25 43:8,16,25 44:8,8,10,17 44:18 45:2 46:6,12 47:14 49:15 49:24 51:9 52:3 54:4 56:5 73:17 75:17,18 76:17,21 81:13 83:3,17 91:24 92:4,6 97:2 110:17 111:13 111:15 112:8 114:17 115:3 118:22 122:18 125:20 127:3,21 135:14,15,25 136:6 137:14,15 138:6,18,23 139:4,17 145:12 148:23 149:7 150:13,16 151:9,24 152:9,11,13 153:20 154:4 155:23 159:7 169:20 171:5,22 172:18,20 174:15,18 178:14 179:18 180:14  
**basis** 20:23 42:8 54:23 63:24 66:10 83:8 86:18 98:11,16 105:22 111:19 112:4,12 117:14 118:5,15 133:15 147:4 178:6,7  
**bat** 175:9,11  
**bathroom** 42:22  
**Battery** 2:12  
**bearing** 16:21  
**Beasley** 15:9,15 58:22  
**Bee** 4:13  
**began** 30:5,19  
**begins** 113:10  
**behalf** 18:15 93:23  
**belief** 5:10  
**believe** 8:25 9:24 16:13 24:3 26:21 30:25 48:12 51:2 60:17 61:6 62:19,23 78:23 86:4 87:24 88:7 120:19 125:21 126:24 127:2 131:16 176:8  
**benchmark** 172:19  
**benchmarks** 150:15

**beneath** 13:24  
**benefit** 34:7 151:21 159:5  
**benefits** 95:17,23 96:5,6,9,14,14,22 96:25 128:8  
**Berman** 2:5 5:5,21 6:5 9:8 10:2,8 12:21 24:4,23 25:25 31:24 34:23 40:21 42:18 48:20 55:5 56:8 69:22 70:3 71:23 72:13 74:14 78:10,15 80:10 82:4,22 83:25 86:12 90:12,15 94:14,18 103:21 104:22 106:10 107:2 108:6 109:4 113:22 121:25 142:17 153:2,7 154:19 156:23 164:14 165:4 173:24 174:7 175:17 176:22 180:25 183:4  
**Berman's** 174:6  
**Bernard** 18:7  
**best** 5:9 6:12,16,23 7:2,8 64:22,23 66:4 107:19 119:20  
**better** 81:16 82:14 107:17  
**bias** 137:12,17  
**biased** 137:5  
**biases** 137:9  
**big** 107:23  
**billed** 22:18 34:12  
**billing** 23:23 30:8,21 34:16  
**biographical** 111:3  
**biography** 111:17 112:21  
**biology** 72:4  
**bit** 74:14 89:18,19  
**blend** 145:17  
**blended** 45:20  
**blood** 184:11  
**boards** 166:21 167:2,15  
**body** 26:7  
**bono** 20:22 21:13  
**book** 89:23  
**books** 89:23,24  
**bottom** 24:14 78:15  
**break** 8:3,5,7 42:19,22 47:3,23 48:13,15,15,18 70:20 94:15,24 144:14  
**breakdown** 50:4  
**breath** 80:14 179:18  
**Brian** 18:6  
**brief** 9:12 48:21  
**BRITTANY** 2:14  
**broad** 19:11 45:20 67:21 73:15 97:17 130:9 138:10 140:3 145:14 149:7  
**broader** 39:11 113:18 114:16 148:17 149:12 150:14  
**broadly** 139:4  
**brokers** 131:10  
**building** 69:15  
**bullet** 171:23  
**bunched** 43:5  
**BURMAN** 48:13

|  |  |  |
|--|--|--|
| <b>business</b> 17:17 21:16 34:7 53:17<br>63:11 121:18 | 123:14<br><b>career</b> 44:6 110:10 168:7<br><b>Careers</b> 108:21 110:16 113:3<br><b>case</b> 7:13 10:24 14:14 21:13 23:17<br>27:9,13 31:12,15 36:2,4 37:16,18<br>39:14 49:11 55:9 56:3 64:19 74:4<br>116:8 117:17 118:9,19,20 120:2,9<br>120:14,16,18,24 121:10,12,14,16<br>121:17,19 123:5,16 132:15<br>137:15 142:5,7,12 161:10 169:12<br><b>cases</b> 20:4,9,11,18,19 21:17 23:4,7<br>97:7,18 120:4,6 122:3<br><b>categories</b> 128:25 138:25 139:6,7<br>139:11,14 143:15 147:10 148:17<br>148:19 149:9,23,25 150:3,16<br>152:16,17<br><b>categorizes</b> 150:13<br><b>category</b> 115:4 128:17,21 129:4,5,9<br>130:9,11 131:18,20,21,24 138:15<br>138:16 139:22 140:5,8,12 142:10<br>149:8,16,22 151:19 156:8,18<br>162:3 164:4<br><b>census</b> 77:6,10,12,14<br><b>Center</b> 10:10 17:12 120:21<br><b>central</b> 79:5 159:22,23<br><b>CEO</b> 141:5,6<br><b>CEOs</b> 139:24 141:7,14<br><b>certain</b> 36:3 44:18 45:9 47:7,11<br>80:7 81:3,3 85:21 87:11 134:17<br>139:17 161:4 177:24,24<br><b>certainly</b> 39:18<br><b>certification</b> 3:6<br><b>certified</b> 13:10,13,16,20<br><b>certify</b> 182:7 184:5,10<br><b>CFES</b> 17:15,16,17,23 20:20,25 21:8<br>24:8 31:7 32:13,21 33:5 34:13<br>55:13 63:15 67:15<br><b>Chad</b> 1:19 5:11,23 10:11 144:22<br>182:7,17 183:4<br><b>challenge</b> 118:23 121:6<br><b>challenged</b> 117:11 120:12<br><b>changed</b> 41:22 87:4<br><b>changing</b> 158:17<br><b>characteristics</b> 149:11<br><b>characterize</b> 26:6<br><b>characterized</b> 141:2<br><b>charge</b> 34:9<br><b>chart</b> 50:8 151:15 160:8<br><b>check</b> 38:22 111:25<br><b>Chemical</b> 1:8,9,9 2:11,16<br><b>chemistry</b> 72:6<br><b>chief</b> 136:19,20 139:24 140:6,12,24<br>141:3 150:9 172:13<br><b>choices</b> 33:2<br><b>Circuit</b> 56:6,14 97:25<br><b>circumstances</b> 93:13<br><b>citation</b> 125:21 127:4,23,23<br><b>citations</b> 98:13 | <b>cited</b> 27:6,12 98:17 100:18,23<br>127:19,20 135:2<br><b>City</b> 2:4 45:6<br><b>civil</b> 4:5 59:25 60:3,21 134:6 146:2<br><b>claim</b> 19:16 46:5 97:13<br><b>claims</b> 16:2<br><b>CLARICK</b> 2:7<br><b>clarification</b> 136:2<br><b>clarify</b> 40:6 101:21 175:21 177:12<br><b>clarifying</b> 13:8<br><b>class</b> 60:2,11<br><b>classes</b> 14:12,25 15:2<br><b>classification</b> 131:13 138:19 150:14<br><b>classified</b> 131:5<br><b>clear</b> 75:12 107:9,10,11<br><b>click</b> 110:24<br><b>client</b> 20:16<br><b>client's</b> 31:4<br><b>clientele</b> 86:25<br><b>clients</b> 33:6 134:19 143:17<br><b>co-force</b> 155:21,24<br><b>co-sign</b> 12:14<br><b>co-signator</b> 12:6<br><b>coaching</b> 72:15<br><b>code</b> 136:15<br><b>codes</b> 129:12 136:7,8,9,12,14,25<br><b>cognisant</b> 47:2<br><b>coherent</b> 102:2<br><b>colleague</b> 11:16<br><b>collection</b> 21:11<br><b>collective</b> 7:24 65:17<br><b>collectively</b> 64:8,11<br><b>column</b> 115:4 157:18 159:15<br><b>combined</b> 45:15<br><b>come</b> 94:25 101:10 103:4 116:16<br>147:23<br><b>comes</b> 19:6 102:14 175:4<br><b>comfortable</b> 21:22,25 22:3,4 40:4<br>116:19,22<br><b>coming</b> 12:21,23 111:2 148:21<br><b>command</b> 179:19<br><b>commercial</b> 17:22<br><b>commercially</b> 19:20<br><b>committed</b> 23:14<br><b>common</b> 107:4<br><b>Commonwealth</b> 16:6<br><b>company</b> 79:19 81:9 150:10 171:19<br><b>comparable</b> 41:10 53:16,21 126:5<br><b>compare</b> 31:21 32:2 36:11 45:13<br>66:17 74:23 76:6 127:25 128:6<br><b>compared</b> 36:16 65:23 66:8 75:25<br>115:5 139:16<br><b>compares</b> 176:19<br><b>comparing</b> 35:10 65:5,11 74:7,15<br>76:5 136:16 149:12<br><b>comparison</b> 67:18 71:25<br><b>compensate</b> 24:2<br><b>compensated</b> 21:2,8 22:10,13,16 |
|--|--|--|

|   |  |  |
|---|--|--|
| <p>42:8<br/> <b>compensation</b> 21:2 23:16,21 42:13<br/> 139:13,19 141:13,18,23 142:2<br/> 168:14<br/> <b>competency</b> 154:15<br/> <b>complete</b> 6:24 26:15,24 46:3 76:12<br/> 118:23 164:18 167:24 172:21<br/> 182:10<br/> <b>completed</b> 7:3 45:23 46:11 60:23<br/> 75:6 84:16 115:7 125:23 129:13<br/> 139:20 144:15 154:18 156:3<br/> 165:3<br/> <b>completely</b> 179:20<br/> <b>compliance</b> 136:20 150:10 172:13<br/> <b>components</b> 35:4<br/> <b>comports</b> 55:23<br/> <b>compound</b> 21:4 70:20<br/> <b>comprise</b> 149:9<br/> <b>comprised</b> 33:13 132:2<br/> <b>computer</b> 110:8<br/> <b>concentrated</b> 14:24 17:18<br/> <b>concept</b> 74:15 86:17 98:23 137:18<br/> 153:10 169:25<br/> <b>concern</b> 40:10 61:11<br/> <b>concerned</b> 126:12<br/> <b>concerning</b> 23:25 31:7 35:12 56:23<br/> 57:18 67:11,18 70:14 73:13 77:2<br/> 97:20 121:22 123:21 124:25<br/> 126:4,19 144:4 155:3 167:9,18<br/> <b>conclude</b> 49:16<br/> <b>concluded</b> 152:25 181:14<br/> <b>concludes</b> 155:17<br/> <b>conclusion</b> 57:21 111:16 124:10,13<br/> <b>conclusions</b> 12:12 15:4 26:20 36:4<br/> 64:20,21 115:20 144:7,10,19,21<br/> 145:10,12,19 146:5 147:3,4<br/> <b>condition</b> 8:19,23<br/> <b>conduct</b> 46:17 97:9 102:16 169:14<br/> <b>conducted</b> 4:6 147:17<br/> <b>conducting</b> 101:17<br/> <b>conducts</b> 67:6<br/> <b>conference</b> 4:12 5:11<br/> <b>confidence</b> 153:11,13,17 154:5<br/> <b>confidential</b> 6:1 7:1 8:1,11 9:1 10:1<br/> 11:1 12:1 13:1 14:1 15:1 16:1<br/> 17:1 18:1 19:1 20:1 21:1 22:1<br/> 23:1 24:1 25:1 26:1 27:1 28:1<br/> 29:1 30:1 31:1 32:1 33:1 34:1<br/> 35:1 36:1 37:1 38:1 39:1 40:1<br/> 41:1 42:1 43:1 44:1 45:1 46:1<br/> 47:1 48:1 49:1 50:1 51:1 52:1<br/> 53:1 54:1 55:1 56:1 57:1 58:1<br/> 59:1 60:1 61:1 62:1 63:1 64:1<br/> 65:1 66:1 67:1 68:1 69:1 70:1<br/> 71:1 72:1 73:1 74:1 75:1 76:1<br/> 77:1 78:1 79:1 80:1 81:1 82:1<br/> 83:1 84:1 85:1 86:1 87:1 88:1<br/> 89:1 90:1 91:1 92:1 93:1 94:1</p> | <p>95:1 96:1 97:1 98:1 99:1 100:1<br/> 101:1 102:1 103:1 104:1 105:1<br/> 106:1 107:1 108:1 109:1 110:1<br/> 111:1 112:1 113:1 114:1 115:1<br/> 116:1 117:1 118:1 119:1 120:1<br/> 121:1 122:1 123:1 124:1 125:1<br/> 126:1 127:1 128:1 129:1 130:1<br/> 131:1 132:1 133:1 134:1 135:1<br/> 136:1 137:1 138:1 139:1 140:1<br/> 141:1 142:1 143:1 144:1 145:1<br/> 146:1 147:1 148:1 149:1 150:1<br/> 151:1 152:1 153:1 154:1 155:1<br/> 156:1 157:1 158:1 159:1 160:1<br/> 161:1 162:1 163:1 164:1 165:1<br/> 166:1 167:1 168:1 169:1 170:1<br/> 171:1 172:1 173:1 174:1 175:1<br/> 176:1 177:1 178:1 179:1 180:1<br/> 181:1<br/> <b>conform</b> 55:20<br/> <b>conforms</b> 56:2,24<br/> <b>confused</b> 32:16,17 74:14 157:15,23<br/> 162:21<br/> <b>confusing</b> 19:5 106:9<br/> <b>Conley</b> 18:6<br/> <b>connected</b> 66:13 71:7<br/> <b>connection</b> 18:8 19:24 33:9 36:18<br/> 70:7 153:14 166:11,18 168:21<br/> 174:3<br/> <b>consent</b> 4:17<br/> <b>conservative</b> 149:8<br/> <b>consider</b> 40:23 95:10 133:7 138:16<br/> 139:7 143:8,19 165:7 166:5,8,10<br/> 168:2 173:2,20<br/> <b>consideration</b> 143:16<br/> <b>considered</b> 4:18 119:10 120:24<br/> 137:2 151:11 165:21 166:17<br/> 175:21 176:2<br/> <b>considering</b> 85:17 86:19<br/> <b>considers</b> 167:14<br/> <b>consisted</b> 43:3<br/> <b>consistent</b> 12:12<br/> <b>construction</b> 137:4<br/> <b>consult</b> 168:21<br/> <b>contact</b> 86:11<br/> <b>contacts</b> 44:3 53:4 75:23 172:18<br/> 175:7 178:7<br/> <b>contain</b> 26:15 149:17<br/> <b>contained</b> 11:8 42:24 46:4 72:18<br/> 77:23 100:22 140:3 145:10<br/> 148:20<br/> <b>contains</b> 42:17<br/> <b>contemporaneous</b> 89:14 164:9,20<br/> <b>content</b> 85:7 169:4,6,8<br/> <b>contention</b> 99:10,18,25<br/> <b>context</b> 15:25 55:16 113:18 133:20<br/> 133:25 134:10 137:20,21,22,24<br/> 138:2 165:2 177:6<br/> <b>continue</b> 53:15 75:9,10 84:7,13</p> | <p>86:7 94:24 95:16 108:3<br/> <b>continued</b> 53:20<br/> <b>continues</b> 53:16,18 147:12<br/> <b>continuing</b> 53:10 54:9 82:17<br/> <b>contrast</b> 27:20<br/> <b>contributed</b> 59:10<br/> <b>control</b> 4:13 45:9 170:20<br/> <b>controlling</b> 47:6<br/> <b>conversation</b> 9:13 38:8 99:3 100:19<br/> 116:12 180:15<br/> <b>conversations</b> 9:15,16 80:15 98:19<br/> 99:14 102:25<br/> <b>copy</b> 181:10,11,12<br/> <b>corners</b> 46:4<br/> <b>Corp</b> 121:18<br/> <b>corporate</b> 135:12 136:21 148:13<br/> 150:8<br/> <b>Corporation</b> 1:9,9 2:16<br/> <b>corporations</b> 170:18<br/> <b>correct</b> 9:2,20 10:17 12:17,25 18:21<br/> 21:15 23:4 25:10 26:6,25 27:18<br/> 27:25 29:13 41:14 46:24 47:7,9<br/> 49:12 50:15,22 51:21,25 52:6<br/> 53:2 54:13 56:20 63:25 68:21<br/> 69:7,8 70:19 73:8,11 76:17 77:4<br/> 77:24 78:24 86:2 88:10 91:12,25<br/> 92:15 94:3,4 97:5 100:11 105:5<br/> 109:10 111:16 113:4,7 118:18<br/> 120:22 125:9 128:25 129:6<br/> 130:12,14,18,20 131:18 132:9,14<br/> 133:22 135:10 136:10 138:20,21<br/> 140:13,16 149:14 156:8,22 158:5<br/> 158:7 161:9 162:14,20,25 163:6<br/> 163:11 166:7 167:7,19 171:11,13<br/> 171:15 172:8 176:4 177:7 178:11<br/> 178:16 182:11,13<br/> <b>correctly</b> 35:3 37:8 38:4 156:5,10<br/> <b>correlation</b> 142:13,20,23 151:16<br/> 165:14<br/> <b>correspond</b> 34:17<br/> <b>corroborated</b> 134:19<br/> <b>corroborates</b> 100:3<br/> <b>cosigned</b> 11:16 120:19<br/> <b>cost</b> 34:7<br/> <b>Costa</b> 1:10 2:7,11<br/> <b>Costullcio</b> 121:17 142:5<br/> <b>counsel</b> 3:6 4:3,10,22 7:16 31:4,4<br/> 135:12 136:20,21,22 148:13<br/> 150:8,9 170:17 172:13 176:20<br/> 179:8,16<br/> <b>counter</b> 83:9<br/> <b>Country</b> 2:4<br/> <b>COUNTY</b> 182:5<br/> <b>couple</b> 25:23 175:15<br/> <b>course</b> 8:2 14:23 42:14 55:13 63:14<br/> <b>court</b> 1:2 3:18 4:7,23 6:20 7:7,20<br/> 10:2 16:23 54:3 57:21 79:5 84:8<br/> 107:6 117:13,17 118:3,14,21</p> |
|---|--|--|

|   |   |  |
|---|---|--|
| 119:9,19 121:20 124:3,7 125:4<br>126:18 127:9,18,21 142:8<br><b>Court's</b> 126:23<br><b>courthouse</b> 19:10,14 22:5 55:19<br>123:6<br><b>courtroom</b> 7:18<br><b>courtrooms</b> 19:3<br><b>courts</b> 54:8 57:23<br><b>cover</b> 41:19 62:8<br><b>covered</b> 145:2<br><b>covering</b> 23:11<br><b>covers</b> 41:13 116:10<br><b>COVID</b> 152:21<br><b>cracked</b> 89:22<br><b>create</b> 137:8,10<br><b>created</b> 34:16<br><b>creating</b> 70:18,23 71:10,18 80:11<br><b>creation</b> 70:15 71:7,14<br><b>credentials</b> 81:14 177:5 179:3<br><b>criteria</b> 44:18 82:15 83:4,22 114:18<br>115:3 137:15,16 140:19 152:9<br>154:11 174:14<br><b>cross</b> 54:19<br><b>current</b> 14:16 18:11,19 30:3 52:15<br>55:2,10 94:9 108:10 172:17<br><b>currently</b> 8:14 17:8 97:24 99:23<br><b>curriculum</b> 59:6 64:14 147:2 183:8<br><b>culp</b> 155:15<br><b>cut</b> 82:21 108:2 143:13 151:9 152:9<br><b>cuts</b> 139:2 143:12,24 159:7<br><b>CV</b> 9:23 10:4,23 12:20 16:20,25<br>25:20 59:7,10 63:19 64:25 145:2<br>145:25 170:6 | 164:7 166:22 167:3 171:4<br><b>date</b> 5:4 18:11,19 23:23 30:4 34:18<br>50:25 51:2 52:15 53:19 85:15<br>90:10,16 135:6 153:18 160:13<br>172:16,17<br><b>dated</b> 113:6<br><b>Daubert</b> 118:23 120:25 121:4,5<br>133:20 134:10<br><b>David</b> 18:7<br><b>day</b> 22:18,23 43:5 51:4 82:22 89:21<br>182:20 184:16<br><b>days</b> 55:9 89:11 173:5<br><b>dealt</b> 60:9 61:4<br><b>death</b> 17:22<br><b>December</b> 86:4 161:8,13,17,19,23<br>161:25 162:4,5,6,7,13,17,23<br>163:6,9,13,19,21,25 164:5,11,21<br><b>decide</b> 21:19<br><b>decided</b> 28:5<br><b>decision</b> 93:14 119:6,23<br><b>deem</b> 54:21<br><b>deemed</b> 119:3 130:16<br><b>Def000722</b> 78:21<br><b>defendant</b> 2:7,15 31:17 73:21<br><b>defendants</b> 1:12 2:11 137:6<br><b>defense</b> 118:20 137:10<br><b>define</b> 130:25 171:4<br><b>defined</b> 33:6 131:9 132:6 149:20<br><b>defining</b> 68:12,13,17 69:2<br><b>definitely</b> 39:3<br><b>definition</b> 69:3,5 132:5 134:5 140:2<br>140:18 141:10 149:19<br><b>degree</b> 14:15 15:8 90:2 130:17<br>131:15 140:21 155:3<br><b>demand</b> 151:3<br><b>demand</b> 178:22<br><b>demographic</b> 114:18<br><b>demonstrates</b> 53:19<br><b>demonstrating</b> 180:22<br><b>demonstrative</b> 44:10<br><b>denial</b> 130:22<br><b>dental</b> 130:20 140:16,19,20,24<br><b>dentists</b> 130:7,18<br><b>deny</b> 174:8<br><b>department</b> 43:9,11 45:16 59:22<br>76:25 99:4,7,20,22 100:20 102:12<br>102:20,21 138:18,23 140:2,9<br>141:9 143:13,22 150:6,13 152:19<br>153:19 159:8<br><b>departments</b> 44:7 102:23<br><b>depend</b> 73:24 176:25<br><b>depending</b> 47:10 83:18 97:13,17<br><b>depends</b> 72:20 131:12<br><b>depose</b> 60:14<br><b>deposed</b> 9:2<br><b>deposing</b> 60:13<br><b>deposition</b> 1:19 4:6 9:6,10 22:19<br>34:20,20 60:10,12 107:3 146:22 | 175:14 182:9 184:6<br><b>depositions</b> 107:4<br><b>deposits</b> 96:18<br><b>derive</b> 77:6<br><b>derived</b> 12:17 15:7 42:4 65:2<br><b>describe</b> 169:3<br><b>described</b> 20:19 33:8 36:19 37:13<br>39:16 40:17 41:18 46:23 52:25<br>57:13 74:6 76:18 102:17 115:10<br>115:23 116:4<br><b>describing</b> 49:12,14<br><b>description</b> 76:19 83:9 85:7<br><b>descriptions</b> 69:12 70:7 72:24<br><b>detail</b> 80:5<br><b>details</b> 161:3<br><b>determination</b> 76:11 112:13 122:25<br>147:23 155:3 166:12<br><b>determinations</b> 172:25<br><b>determine</b> 39:8 76:14 150:19<br><b>determined</b> 28:4 76:9<br><b>develop</b> 35:24<br><b>developing</b> 33:6 64:19 66:21 67:8<br><b>development</b> 12:14<br><b>diem</b> 178:20<br><b>difference</b> 161:18<br><b>different</b> 10:18 15:18 34:9,10 60:4<br>71:3 77:19,20 90:9 134:10,11,11<br>139:13 166:21 167:2,6 171:7<br>177:11 180:4<br><b>differentiate</b> 139:12 140:23<br><b>differentiated</b> 141:14<br><b>differentiates</b> 139:16<br><b>differently</b> 90:24<br><b>diligence</b> 121:22 122:14 123:22<br><b>diligent</b> 44:12 45:20 46:17 48:3<br>95:11 114:25 122:22 124:20<br><b>dillying</b> 46:24<br><b>diminution</b> 46:9<br><b>direct</b> 5:20 48:23 78:8 96:18 113:25<br>147:7,15 165:13 166:2<br><b>directed</b> 78:20<br><b>directing</b> 95:7 114:5<br><b>directly</b> 63:23 64:3<br><b>discipline</b> 167:13<br><b>discloses</b> 145:6,9<br><b>disclosing</b> 8:12<br><b>disclosure</b> 23:11<br><b>discoverability</b> 97:21<br><b>discoverable</b> 97:15,19<br><b>discovery</b> 43:17 97:9,11<br><b>discrimination</b> 17:21 57:25<br><b>discuss</b> 46:2 61:21 81:2 123:9<br><b>discussed</b> 12:13 25:21,23 37:5,24<br>38:9 55:16 62:2,6,19 65:18 92:13<br>99:13 114:15 122:20 123:15<br>132:10 145:14 146:15 151:10,15<br>152:20 171:13<br><b>discussion</b> 99:5 153:5 |
|---|---|--|

---

**D**


---

**D** 1:1 2:1 3:1 4:1 5:1,15 182:2 183:2  
**D-R-I-P-P-S** 11:19  
**damages** 17:19 18:17,18 60:5 82:18  
86:8 168:4  
**data** 27:12 37:19 45:20,21 51:10  
62:15 65:24 77:6,8,10,11 114:13  
114:16,22 115:13,17,19,22  
116:17 122:19,19 125:17,22  
127:4,17 132:19 133:8,16 134:3  
138:6,7,24 139:2 143:12,22 144:2  
145:14,15 148:3,16 150:8,11,18  
152:9 153:18 155:9,14,16 157:8  
158:5,7,14,24 159:8,25 161:20  
162:8,8,12,15,24 163:2,3,5,8,13  
163:20,23,24 164:2,9,12,19,20,22  
164:25  
**database** 39:10 119:11,18 120:5,12  
123:25 124:5,12 132:9,14,23  
133:9,17 134:4,18 135:7,17,24  
136:4,6,9,13,17 137:5,8,12,14,25  
138:3,6,8,12,13 166:19 169:7,9  
**databases** 44:5 169:8  
**dataset** 45:3 47:12 159:2 162:9

|  |   |  |
|--|---|--|
| <p> <b>discussions</b> 178:9<br/> <b>dispositive</b> 79:25 81:12<br/> <b>disputes</b> 17:22<br/> <b>District</b> 1:2,2 79:5 117:22,22 118:4<br/> 118:21 124:18,24 125:7,14,16<br/> 127:15<br/> <b>divers</b> 149:13<br/> <b>dividing</b> 51:24 53:4<br/> <b>doctorate</b> 131:15 140:21<br/> <b>doctors</b> 129:15,21 130:14<br/> <b>doctrine</b> 167:21 168:2,9,10 177:22<br/> <b>document</b> 10:9,14,21 11:2,9 24:7<br/> 24:12,24 25:6,7,17 53:3 176:14<br/> 179:6 180:8,14<br/> <b>documentation</b> 172:21<br/> <b>documented</b> 31:21 35:11 42:25<br/> 49:21 50:4,13 145:13<br/> <b>documents</b> 25:13 26:12,19,21,24<br/> 27:6,8 28:4,8 43:17 49:11,13,15<br/> 49:18,25 96:12<br/> <b>doing</b> 22:3 33:18 53:13 64:18 93:24<br/> 102:13 116:5,16<br/> <b>DOL</b> 129:10<br/> <b>dollars</b> 176:7<br/> <b>Donna</b> 1:10 2:7,11<br/> <b>door</b> 175:24 180:17<br/> <b>Doyle</b> 110:6,9<br/> <b>Doyle's</b> 111:7<br/> <b>draft</b> 13:5 29:2 30:18 32:24<br/> <b>drafted</b> 28:19<br/> <b>drafter</b> 12:24<br/> <b>drafting</b> 12:22 14:16 21:21,25 30:6<br/> 30:19 64:21<br/> <b>drafts</b> 13:3 29:15,17,20,23 30:24<br/> 31:3,7<br/> <b>draw</b> 165:13<br/> <b>draws</b> 166:2<br/> <b>Drexel</b> 59:16 60:7,8 62:18,19<br/> <b>drill</b> 76:24<br/> <b>Dripps</b> 11:17,18,20,25 12:4,13 13:3<br/> 13:5 18:3 120:15,19<br/> <b>Dripps'</b> 22:21<br/> <b>driven</b> 138:12<br/> <b>duly</b> 5:16 184:7<br/> <b>duration</b> 44:15 114:9 115:22<br/> 140:22 141:25 142:14,25 143:6,7<br/> 143:20,25 144:5 147:10 151:14<br/> 151:16 158:16,19,20 159:25<br/> 163:15 165:11,22 166:3,12<br/> <b>duties</b> 33:15,18,23 34:3 55:13 63:14<br/> 74:3<br/> <b>duty</b> 53:10,15,18 54:9 82:17,24<br/> 167:18 177:7,15,18<br/> <b>dynamic</b> 75:25 166:4<br/> <b>dynamics</b> 158:16 165:15 </p> | <p> 182:2,2 183:2,6 184:2,2<br/> <b>e-mailed</b> 103:22<br/> <b>earlier</b> 18:21 34:24 38:8 55:16<br/> 74:20 85:16 114:15 167:17<br/> 170:11<br/> <b>earliest</b> 87:25 90:10<br/> <b>earning</b> 168:18 178:13<br/> <b>earnings</b> 46:9 48:7,8 168:12,24<br/> 177:24<br/> <b>easier</b> 107:5<br/> <b>Eastern</b> 117:22 118:4,21<br/> <b>economic</b> 10:10 14:12,25 15:2,4<br/> 17:5,13,19 19:8 21:13 22:6 27:12<br/> 33:7 35:23 36:5,8,12,12,19,20<br/> 37:5,19 38:10 41:18 44:6 45:20<br/> 55:18,20 56:24 61:6 63:3 64:19<br/> 65:20 114:25 115:13 116:6<br/> 120:22 145:14 146:10 151:2<br/> <b>economics</b> 14:24 15:3 18:11,20,25<br/> 19:4,8,12,12,17,20,25 20:2,3,4,5<br/> 21:7,17 40:2,16,22 42:5 54:6<br/> 55:17 57:24 58:17 61:4,11,13<br/> 62:15 63:6 65:9 66:6 81:5 105:17<br/> 167:14<br/> <b>economist</b> 11:17 12:6 17:4 18:14,23<br/> 46:8,8 55:16 64:17,18,24 65:8,17<br/> 66:5 73:4 92:5,7,21 96:9 118:20<br/> 126:25 145:19 150:24 172:9<br/> <b>economists</b> 17:23,25 61:5,8,9<br/> 105:16<br/> <b>economy</b> 148:5 150:22 151:12<br/> <b>editing</b> 13:7<br/> <b>education</b> 13:24 14:2 151:25<br/> <b>effect</b> 3:17 143:19<br/> <b>effort</b> 43:21 45:14 46:18 50:21 51:6<br/> <b>efforts</b> 31:22 35:13 36:11,16 37:21<br/> 38:6,15,25 40:11 41:5 43:10<br/> 44:10,11 45:18 46:19 48:2 51:13<br/> 51:20 53:8,20 56:13 62:16 65:5<br/> 65:11,23 66:9,17 75:25 99:6<br/> 121:23 122:10,19,21 123:9<br/> 125:17 126:8,9 168:16 172:20<br/> <b>eight</b> 147:6<br/> <b>either</b> 27:18 63:13 64:20 66:2 81:11<br/> 83:17 152:11 170:18 184:11<br/> <b>elements</b> 95:10<br/> <b>eligibility</b> 87:14<br/> <b>eligible</b> 86:19<br/> <b>empirical</b> 155:16<br/> <b>empirically</b> 141:25<br/> <b>employability</b> 98:23 99:15 100:21<br/> 102:10,24,25<br/> <b>employed</b> 17:8,10 58:2 70:25 144:7<br/> <b>employee</b> 65:12 98:25 128:2<br/> <b>employee's</b> 177:18<br/> <b>employees</b> 132:7 139:13 150:2<br/> <b>employer</b> 71:10 76:10 80:19 81:16<br/> 82:7 83:7,13 91:23 92:10,11 94:9 </p> | <p> 173:7,19 174:25 178:9 179:2,7<br/> 180:16,16<br/> <b>employer's</b> 83:9<br/> <b>employers</b> 71:11 175:8 179:23<br/> <b>employment</b> 15:22,23 17:21 31:17<br/> 31:20,23 35:9,11,14 36:16 43:3<br/> 45:9,12,14,19 49:6,7,16 53:16<br/> 57:25 61:20,22 62:9 65:6,13<br/> 66:25 73:25 74:2 79:15 80:20<br/> 92:10 97:18 98:22 114:3 115:3<br/> 126:6,14,20 141:19 147:20<br/> 148:23 149:11 150:20 155:7<br/> 157:20 159:4,21,24 160:9 162:16<br/> 164:5 168:25 176:4 178:25<br/> <b>enable</b> 161:24<br/> <b>encompass</b> 61:14<br/> <b>engage</b> 9:9<br/> <b>engaged</b> 51:5<br/> <b>engagements</b> 22:7 176:18<br/> <b>engineer</b> 141:4,5,6<br/> <b>engineers</b> 131:2,4,4,16<br/> <b>ensure</b> 55:25<br/> <b>entire</b> 151:7 153:21<br/> <b>entirely</b> 179:5<br/> <b>entitled</b> 103:22 114:9<br/> <b>entry</b> 50:8,10 83:16 174:23<br/> <b>enunciate</b> 6:12<br/> <b>equal</b> 143:4<br/> <b>errors</b> 12:9<br/> <b>especially</b> 107:5 152:21<br/> <b>ESQ</b> 2:5,14,18<br/> <b>established</b> 161:21<br/> <b>establishing</b> 73:13 178:4<br/> <b>estate</b> 53:12,13,13,17 131:10 155:8<br/> 168:7<br/> <b>estimate</b> 153:14 154:21 155:4 156:6<br/> 156:11,12,19 157:3,9 158:2<br/> 162:18 165:5<br/> <b>estimated</b> 157:13<br/> <b>estimating</b> 157:25 166:6<br/> <b>estimation</b> 148:22<br/> <b>evaluate</b> 31:17<br/> <b>evaluating</b> 35:6 61:19<br/> <b>evaluation</b> 17:19<br/> <b>events</b> 76:11<br/> <b>evidence</b> 121:8<br/> <b>exact</b> 163:2<br/> <b>exactly</b> 170:7 180:20<br/> <b>exam</b> 87:18,23 89:2,5,9,10,16 90:2<br/> 90:23<br/> <b>examination</b> 3:7,16 5:20 14:14<br/> 54:20 88:13 181:13 183:3<br/> <b>examinations</b> 15:19 38:12<br/> <b>examine</b> 36:9 47:17<br/> <b>examined</b> 5:18 45:7<br/> <b>examining</b> 37:21<br/> <b>example</b> 84:25 85:5 176:14 179:6<br/> <b>exception</b> 16:17 34:19 127:16 </p> |
| <p style="text-align: center;"><b>E</b></p>  |   |  |
| <p>E 1:1 2:1,2,2 3:1 4:1 5:1,15 15:9</p>   |   |  |

|  |   |   |
|--|---|---|
| <p><b>exclude</b> 117:11 120:12 126:18 175:6</p> <p><b>excluded</b> 117:14 118:4,14 121:21 123:13,22,25 125:14 127:10 135:5 142:8</p> <p><b>exclusion</b> 127:13</p> <p><b>exclusively</b> 44:2</p> <p><b>executive</b> 139:24 140:12,24 141:3</p> <p><b>executives</b> 136:19 140:6</p> <p><b>exhausted</b> 172:21</p> <p><b>exhaustive</b> 177:23</p> <p><b>exhibit</b> 10:3,5,6 24:5,9,10 78:12,18 78:19 103:22,24,25 104:2 108:9 108:10,10,12,13,14,15 183:8,9,10</p> <p><b>exhibits</b> 24:6</p> <p><b>exist</b> 83:2 134:17 139:3 144:2 150:11</p> <p><b>existed</b> 15:5 31:18 45:2 47:18 74:21 75:15 76:2 139:2 155:11 171:18 172:10,10</p> <p><b>existence</b> 134:23,25</p> <p><b>existing</b> 66:19 134:14</p> <p><b>exists</b> 66:15</p> <p><b>expect</b> 7:14 141:13 150:16 152:22 162:2 164:3 166:7</p> <p><b>expected</b> 41:9 43:14 44:19 114:19 125:2 126:13 165:6</p> <p><b>experience</b> 17:6 46:7 47:15 54:5 73:23 75:17,18 76:20 80:14 81:8 82:11 83:18 90:7 92:6,21,25 110:15 144:3,6,10,18,24 145:4,9 146:4,9,10,25 148:20 152:13 154:4,14 159:12 165:17 168:10 168:17,23 170:16,21 173:4,22 174:3,4,12,15,17,21 179:19,23</p> <p><b>experienced</b> 145:7 159:19</p> <p><b>expert</b> 11:3,11,14,21,23 12:4 19:23 20:5 21:18 23:3,11,17 24:2,20 25:9 28:9,11,15,19 30:6 31:8 32:12,18,21,23,24 33:5 54:12 56:2,16 57:6 58:5 71:24 73:6 80:6 83:8 84:19 92:14 95:5,8 100:8 111:8,11 112:17 113:20,23 117:7 117:14 118:5,14 120:14 122:12 123:12 124:18,24 132:13,15 133:22 135:2 144:17 170:12</p> <p><b>expert's</b> 121:21</p> <p><b>expertise</b> 18:9,12 19:16,20 74:5 111:5,7 112:24 170:23</p> <p><b>experts</b> 60:2,3,3,5,13,20 100:21 102:10 103:2 110:10,12 122:6 124:8 134:11</p> <p><b>explain</b> 54:10 144:9 146:3</p> <p><b>explained</b> 19:3</p> <p><b>explanation</b> 124:8</p> <p><b>explicitly</b> 15:21 74:19</p> <p><b>explore</b> 81:7 83:2,6 146:18 164:23 173:18 175:25 177:2</p> | <p><b>explored</b> 144:13,13 176:13</p> <p><b>express</b> 4:17</p> <p><b>expressing</b> 171:9</p> <p><b>expressly</b> 27:16</p> <p><b>extend</b> 71:11</p> <p><b>extent</b> 8:9 14:13 15:3 17:2 18:16 26:3 54:10 55:19 63:18 65:7,24 67:2 70:10 79:17,21 86:5 100:24 133:12,13 168:6 173:7 178:3,5</p> <p><b>extracted</b> 138:6</p> <hr/> <p style="text-align: center;"><b>F</b></p> <hr/> <p><b>F</b> 1:1 2:1 3:1 4:1 5:1 184:2</p> <p><b>F.R.C.P.26(a)(2)(B)</b> 25:14</p> <p><b>fact</b> 5:11 27:7 73:17 79:24 108:24 112:6,23 122:25 179:24</p> <p><b>factor</b> 113:13,19 168:8 173:16,21</p> <p><b>factors</b> 165:15,21</p> <p><b>facts</b> 83:12</p> <p><b>factual</b> 86:18</p> <p><b>faculty</b> 58:22 59:14</p> <p><b>failed</b> 122:7,23 123:8,16,18</p> <p><b>failure</b> 119:2 123:18 127:4</p> <p><b>fair</b> 26:8 27:15,20 38:24 39:19 46:22 57:16 69:4 89:25 95:8 115:9 116:14 138:5 165:20,20 169:3 179:4</p> <p><b>fall</b> 91:10 140:6</p> <p><b>familiar</b> 23:10,13,14 57:23 63:7,10 67:23 68:10,18 69:4,17 72:24 73:2 118:9,19 121:7,10,12,16,19 137:18,22 142:5,11 153:10 168:15,19 169:24</p> <p><b>familiarity</b> 73:5,5</p> <p><b>fantastic</b> 179:22</p> <p><b>far</b> 7:23 11:24 22:25 23:20,20 27:7 27:13 29:20,21 44:11 54:22 55:10 64:9 71:4 75:21 84:9 100:22 133:19 134:21 146:24 157:18 159:14 168:16 172:23 176:10</p> <p><b>favor</b> 137:6</p> <p><b>feasible</b> 79:24</p> <p><b>February</b> 36:15 45:4 47:19 50:9,10 50:18 52:5,10,21 88:5,7 89:2 145:16 159:5,18 172:2 173:9</p> <p><b>Federal</b> 3:2 4:4 23:7,10 54:8 79:5 79:16 117:13,17,21 118:3,14,21 120:9 121:8 134:6 146:2</p> <p><b>fee</b> 25:22 26:2,3 183:13</p> <p><b>feedback</b> 31:6</p> <p><b>fell</b> 44:11</p> <p><b>fellow</b> 11:17</p> <p><b>felt</b> 21:22,24 22:3,4</p> <p><b>field</b> 17:4,7,20 19:17 57:24 65:8 66:5,14 67:23,25 68:3,14,20 72:18 74:22 105:16 111:9 112:17 112:18,24 135:8,9,18 136:10 155:9 167:13</p> | <p><b>fields</b> 136:5,10</p> <p><b>Fifth</b> 2:8</p> <p><b>figure</b> 52:23 162:18</p> <p><b>figures</b> 99:7</p> <p><b>file</b> 9:11 28:7</p> <p><b>filed</b> 56:3</p> <p><b>filing</b> 3:7 93:22 121:5 151:4</p> <p><b>fill</b> 83:19</p> <p><b>filter</b> 47:17 171:24</p> <p><b>final</b> 29:10,13,18,24</p> <p><b>finale</b> 46:25</p> <p><b>financial</b> 96:18 170:23</p> <p><b>find</b> 31:22 35:13 36:16 41:10 45:18 53:15,21 99:2 103:17,18 125:2 126:5,14,20 148:23 150:20 151:19 153:15 154:22 156:7 157:10 158:21 160:9 162:19 164:5 165:6 166:7 168:13</p> <p><b>finding</b> 159:20</p> <p><b>findings</b> 35:24 48:10 99:16 100:18 123:2 144:22 145:3</p> <p><b>finds</b> 92:11 145:23</p> <p><b>fine</b> 17:16 108:5 116:25</p> <p><b>finish</b> 6:23 84:11 88:22 107:13</p> <p><b>finished</b> 82:23 84:2 175:17</p> <p><b>firing</b> 67:15</p> <p><b>firm</b> 21:16 22:14,15 41:2 42:4 53:13 68:5 177:4</p> <p><b>firm's</b> 33:15 67:2</p> <p><b>firms</b> 94:8 170:18</p> <p><b>first</b> 5:16 24:16 26:6,11 28:13 30:5 49:4 50:8,10 88:15 90:16 91:2 95:15 101:6 104:8,10 112:10 114:9 156:8 157:22 160:24</p> <p><b>Fischman</b> 1:4 2:21 6:6 12:11 15:5 16:2 18:15 24:8 25:4 31:20 36:14 43:15,19 44:2,17,19 45:2,8 46:5 46:10,14,16,16 49:6,11,16,21,25 50:5,14 51:10,23 52:15 53:10,21 73:16,20 74:22 75:17 76:3,16,21 78:2,24 79:7,11 80:13,21 82:10 82:16 83:23 84:15 85:13,18,23 86:19 88:2 90:6,17 91:3 92:20 95:22 96:19,22 114:18,19 115:6 123:11 135:11 136:13,16,24 137:3 139:3,6 146:14,18 147:11 147:17 149:21 151:7,11,22 152:10,10,18,23 153:15 154:22 155:6,12,16 158:25 159:3,9,11,17 159:20 161:11 165:6 166:6 170:22 171:6,17 172:16 173:8,18 173:21 174:16 176:12 177:5 178:2,8,13 179:22</p> <p><b>Fischman's</b> 31:16 35:6,13 36:10 42:25 45:18 47:14 81:8 87:21 88:25 90:11 116:8,9 122:18 132:15 135:9 136:10 137:15 143:8 144:5 145:13,23 148:19</p> |
|--|---|---|

|  |   |  |
|--|---|--|
| 149:10 154:14 169:16 170:5<br>171:10 174:2 178:18<br><b>fit</b> 54:21 76:10 81:7,9 149:22<br><b>five</b> 48:19,20 105:10 113:23 137:16<br><b>five-page</b> 10:9<br><b>flip</b> 24:24<br><b>Floor</b> 2:8,12<br><b>follow-up</b> 107:13<br><b>following</b> 82:18 89:11 95:16<br><b>follows</b> 5:19<br><b>foot</b> 175:23 180:17<br><b>footnote</b> 49:8,10,25 50:17,19,20,20<br>98:12,14,18 100:2,6,14,19 101:3<br>104:17 105:5 129:11<br><b>footnoted</b> 127:18<br><b>footnotes</b> 27:19<br><b>force</b> 3:17 139:17 152:12<br><b>forensic</b> 10:10 17:4,5,13 18:22,25<br>19:4,5,7,11 27:11 54:6 55:15,17<br>61:8 64:17,17 65:8,17 66:5<br>119:10,18 120:5,11 123:25 124:9<br>132:9,18 133:8,17 134:4 135:7,17<br>135:23 136:4,9,17 137:5 166:19<br>167:14 171:4<br><b>forensis</b> 19:7<br><b>forget</b> 89:23 161:5,6<br><b>form</b> 3:11 27:23,25 28:21 68:22<br>71:20 106:19 114:23 168:5<br><b>formal</b> 7:18 15:24<br><b>formally</b> 20:15<br><b>former</b> 170:5<br><b>forms</b> 98:11 115:20<br><b>formulate</b> 26:19 114:14<br><b>forth</b> 43:21 44:9 45:15 59:5 83:4<br>122:17,23 145:20 146:25 147:3,4<br>184:7<br><b>forties</b> 151:11<br><b>FORTINSKY</b> 2:18 5:7 48:19 55:3<br>71:19 72:3,16 94:25 106:19<br>156:14 157:5 168:5 181:7,12<br><b>fortunately</b> 159:3<br><b>Fortune</b> 150:10<br><b>forum</b> 19:6,10,14 55:19<br><b>forward</b> 93:16<br><b>found</b> 44:19,22 124:3,7,11 127:22<br>147:19 152:23 153:25 154:11<br>155:21,25 157:12,21<br><b>foundation</b> 133:21<br><b>foundational</b> 53:23 114:23<br><b>four</b> 18:5 46:4 94:20 95:6,7 100:23<br>107:14,15 138:25 143:15 159:7<br>175:13<br><b>fourth</b> 85:7<br><b>free</b> 21:14 137:12,16<br><b>front</b> 18:17 26:11 106:21 108:17<br>142:23<br><b>fruits</b> 75:25<br><b>full</b> 77:14 91:6 100:24 109:16,20,22 | 116:20 147:8,16<br><b>full-time</b> 34:13 43:22 98:7 99:12<br>101:17 102:6 106:5 113:14<br>147:19<br><b>fully</b> 59:5 100:23 127:20 146:25<br>147:3,4<br><b>further</b> 3:10,15 4:14 180:25 184:10<br><b>future</b> 5:4 157:4 158:14,22  | <b>group</b> 148:25 149:12<br><b>GUERON</b> 2:7<br><b>guess</b> 17:11 19:11 88:22 93:24<br>107:22 156:20 180:9<br><b>guessing</b> 38:20<br><b>guide</b> 100:20 102:13,21 152:22<br><b>guidelines</b> 128:7 |
| <b>G</b>   |   |  |
| <b>G</b> 182:2<br><b>gaps</b> 43:6<br><b>garbage</b> 137:19,19,23<br><b>Garden</b> 2:4<br><b>gather</b> 116:6<br><b>gender</b> 44:17 139:5 149:7 152:11<br><b>general</b> 44:17 57:10 68:2 86:17<br>136:20,21 144:7 150:9 151:5,12<br>152:12 172:13 176:20 179:8,16<br><b>generally</b> 23:14 35:15 37:15 57:22<br>89:8 97:14,16 101:15 167:23<br>176:24 177:14<br><b>generate</b> 42:14<br><b>generating</b> 69:12 70:7 72:23<br><b>generous</b> 149:3<br><b>getting</b> 29:18 153:7 175:8<br><b>Gilham</b> 18:6<br><b>gist</b> 47:22 48:4,7<br><b>give</b> 38:18 40:2 102:22 107:11<br>122:6 124:24 126:4<br><b>given</b> 15:25 81:7 82:11 122:13<br>182:12 184:9<br><b>giving</b> 79:11 92:16 122:11 123:3<br><b>glad</b> 135:21<br><b>go</b> 30:7,14,21 38:7 47:23 55:10<br>73:22 78:4 101:21 102:7 129:10<br>129:17 135:4 143:23 152:4,6<br>157:11 165:14<br><b>goal</b> 43:20 75:14 76:6<br><b>God</b> 11:22<br><b>goes</b> 17:6 24:16 44:13 82:12 115:19<br>155:10<br><b>going</b> 6:25 9:22 37:16,17 38:14<br>54:4 71:19 74:15 77:19 82:21<br>93:16 94:18,18 107:15 136:6<br>138:12 148:2,2 149:7 158:2<br>176:25 179:7,12<br><b>good</b> 6:4 15:20 66:6,7 76:9 81:9<br>85:10 175:5<br><b>Google</b> 103:3,5,16,18 104:5 105:7<br>106:6,15,22 108:18 183:10<br><b>Googling</b> 106:18<br><b>GORDON</b> 2:10<br><b>grammatical</b> 12:8<br><b>granular</b> 39:11 143:14,14,25<br>150:11<br><b>graph</b> 170:19<br><b>greater</b> 39:2,4 65:21 151:3   | <b>H</b>  |  |
|  | <b>H</b> 5:15 183:6<br><b>hac</b> 16:17<br><b>half</b> 22:18,23 37:6 153:24 154:8,11<br>159:23<br><b>hand</b> 37:19 159:15 184:16<br><b>handbook</b> 99:20<br><b>happen</b> 76:11 179:12,12<br><b>happens</b> 140:20<br><b>happy</b> 8:4 12:14 75:10 107:14<br>175:16<br><b>head</b> 69:8 108:22 109:2,17,21<br>124:21 125:8,11 142:3 167:12<br><b>headhunters</b> 44:5 102:11<br><b>hear</b> 6:11 7:12 25:6 29:4 55:3<br>121:24 173:24 174:9<br><b>hearing</b> 121:4<br><b>held</b> 1:21 59:12 153:6<br><b>help</b> 179:23<br><b>hereinbefore</b> 184:7<br><b>hereto</b> 3:5 25:15<br><b>hereunto</b> 184:15<br><b>hesitant</b> 38:19 40:6<br><b>hidden</b> 174:24<br><b>high</b> 47:23<br><b>higher</b> 39:19 151:24 178:23<br><b>highlight</b> 146:20<br><b>highly</b> 110:9,12 150:24 151:25<br>180:23<br><b>hire</b> 83:15 179:8<br><b>hired</b> 21:18 31:7 67:3 93:6,10,15,21<br>94:5<br><b>hires</b> 161:4,4<br><b>hiring</b> 67:7,12,15 70:15,17,18,23,24<br>71:14 74:16,18 81:5 82:13<br><b>historical</b> 158:5,14,20<br><b>hold</b> 175:3<br><b>holding</b> 39:17<br><b>Holdings</b> 1:8,9 2:11,16<br><b>home</b> 118:11 119:6,24 120:17<br>123:14 175:10<br><b>honest</b> 178:3<br><b>honor</b> 16:19<br><b>honors</b> 16:20<br><b>hour</b> 22:17,22 34:12<br><b>hourly</b> 22:13,15 23:20 42:8 176:11<br>176:19 178:6,19,23 179:19<br><b>hours</b> 22:24 43:24 94:20 98:8 99:10<br>104:11 107:14,15 113:15 175:13<br><b>human</b> 46:6 61:16 108:24 109:15 |  |

|  |   |   |
|--|---|---|
| 112:3,6<br><b>hundreds</b> 38:25 84:25 85:3,4<br><b>hunters</b> 136:5<br><b>hygienist</b> 140:19,20,24 141:2<br><b>hygienists</b> 130:20,22 140:16<br><b>hypothetical</b> 141:11 164:8,10,18   | <b>indulging</b> 175:18<br><b>industrial</b> 58:7,11 67:24 68:6,14,20<br>69:6,10,19 72:19,25 73:7,10<br><b>industry</b> 17:6 73:25 148:11 149:18<br>152:6 154:2,4 164:11 171:7<br><b>industry's</b> 110:9,11<br><b>information</b> 8:11 15:23 18:10,19<br>23:24 31:22 35:12 36:6,13 37:12<br>39:8,11 40:16 43:23 46:13 72:22<br>100:3,6,9,14 102:14,19 110:24<br>114:23 116:6 124:4,9 138:11<br>140:22 145:18 162:13 166:20<br>167:9<br><b>informed</b> 57:17<br><b>inherent</b> 144:25<br><b>initial</b> 103:3<br><b>initially</b> 21:18<br><b>injury</b> 17:21<br><b>Institute</b> 13:17,21<br><b>institutions</b> 44:6 59:13<br><b>instruct</b> 54:3<br><b>instructed</b> 7:16<br><b>instruction</b> 7:23<br><b>instructions</b> 7:25 8:8<br><b>instructor</b> 13:16,20<br><b>instructs</b> 81:21<br><b>insufficient</b> 145:24<br><b>intelligence</b> 109:10,19 110:8<br><b>Intelligencer</b> 64:23<br><b>Intelligencer's</b> 66:4<br><b>intention</b> 11:25 54:16,18<br><b>interested</b> 80:15 184:13<br><b>international</b> 79:18 121:18<br><b>interpretation</b> 145:17<br><b>interrogatories</b> 169:21<br><b>interrupt</b> 107:20 153:3<br><b>interrupted</b> 107:8<br><b>interval</b> 153:11,14,17 154:5<br><b>interviewed</b> 76:8<br><b>investigated</b> 172:16<br><b>investigation</b> 64:9 133:14<br><b>involve</b> 62:14<br><b>involved</b> 37:21<br><b>involves</b> 32:21 33:23<br><b>involving</b> 71:24<br><b>isolating</b> 139:16<br><b>issue</b> 26:5 80:2 81:13 92:12<br><b>issued</b> 127:7<br><b>issues</b> 61:7 63:3 65:20 68:4 127:15<br>127:16<br><b>issuing</b> 29:24<br><b>item</b> 53:24 | 159:2,4 160:2,10,12,15,18,22,23<br>161:12,20 162:8,9,11 163:3,8,16<br>163:17 164:22 178:16<br><b>Jennifer</b> 1:4 2:21 6:6<br><b>JEROME</b> 2:18<br><b>Jersey</b> 16:6,8 45:6,6 77:23 78:3<br>79:8,10,20 80:3,20,22 82:8 83:14<br>87:8,15 91:19 128:7<br><b>job</b> 27:11 36:10 37:21 38:5,15,24<br>40:10,20 41:5 42:25 43:4,10,10<br>43:16,18,21,22,23,25 44:3,4,10<br>44:24 45:7,14 46:15,17 48:24<br>49:12,21 50:4,13 51:5,11,12,20<br>52:16 53:8 62:15 65:5,11,22 66:8<br>66:14 67:8,18,19 68:8,10,19 69:5<br>69:12,16 70:7,11,11 72:8,24<br>73:22 74:2,15,18,23 76:5,6,7,7,10<br>76:14,19 80:6,19 81:14 82:7 83:3<br>83:10,22 84:19 86:3 91:12 95:11<br>98:7 99:6,12 101:8,13,18 102:6<br>103:23 104:7,24 106:5 110:5,10<br>110:12 111:13 113:14 119:11,18<br>120:5,11 121:23 122:15,18<br>123:25 124:9,11,13,19 125:2<br>128:6 129:12 132:9,14,18 133:8<br>133:13,17 134:4 135:7,17,23,25<br>136:4,5,9,12,14,15,17 137:5<br>139:18 145:13,23 147:18 165:8<br>165:12,16,16,17 166:18,19,21<br>167:2,3,6,7,10,15 168:15 171:4,5<br>171:10 172:10,11 174:24 175:2<br>177:19,24 178:11,22 179:25<br>180:4,7,8,11,14<br><b>jobs</b> 12:11 36:17 47:7 52:24 66:18<br>66:22 71:25 73:14 74:7 77:23<br>79:10 81:13 83:24 124:11 134:7<br>134:15,17 151:3,5,5,6,25 159:10<br>170:5 171:11,25 172:6,15 173:3,4<br>173:22 174:3,13,22 175:22 176:2<br>176:6 177:19 178:6,11,15,20<br><b>JOHN</b> 1:11<br><b>joining</b> 94:9<br><b>Journal</b> 63:7,10<br><b>journals</b> 59:5 63:13<br><b>July</b> 1:15 88:8,23 91:9 158:25<br>160:21 182:9<br><b>June</b> 88:23 113:6<br><b>juris</b> 131:15<br><b>jurisdiction</b> 22:2 55:21,24 56:3,25<br>57:19 127:11<br><b>jurisdictions</b> 88:12<br><b>jury</b> 54:3,10 |
| <hr/> <b>I</b> <hr/> <b>Iamdiversity.com</b> 101:12 104:16<br>109:14 111:23<br><b>idea</b> 79:24 80:11<br><b>identification</b> 10:7,8 24:11 104:3<br><b>identified</b> 35:18 50:13,20 52:4<br>56:11 63:19 64:13 74:25 76:15,22<br>76:23 96:7 98:24 99:6 112:5<br>117:16 118:7 135:16 136:12<br>139:12,22 143:15 149:25 150:16<br>153:13,22 170:25 171:3,6,16,22<br>173:10 174:19 179:20<br><b>identifies</b> 110:7 159:15<br><b>identify</b> 31:19 42:17 72:20 74:21<br>75:19 76:7 95:9,12,13 101:2,11<br>144:18 157:12 171:25 172:9<br>173:6<br><b>identifying</b> 35:8 62:10 74:7<br><b>imagine</b> 11:22 20:14 21:10,12,23<br>40:18,25 41:6,12 88:5 91:8 154:5<br><b>immediate</b> 159:19<br><b>impact</b> 165:7<br><b>impairs</b> 8:24<br><b>important</b> 7:5<br><b>impossible</b> 155:5,6<br><b>include</b> 25:19 45:6 57:5 72:23<br>85:18 136:4,9 139:24<br><b>included</b> 61:23 77:23 80:6 84:20<br>90:13 91:12 129:8 131:17 136:8<br>141:7,11 148:10 176:14 178:11<br>178:15<br><b>includes</b> 50:21,21 57:8 85:21<br>129:15,21 130:11 140:12,15<br>177:18<br><b>including</b> 14:25 69:11 118:24<br><b>incorporates</b> 169:10<br><b>incorrectly</b> 132:24<br><b>increase</b> 42:12<br><b>independent</b> 102:12 111:4,6,19<br>112:4,12,22 133:15 134:2<br><b>Index</b> 1:7<br><b>indicate</b> 57:22 106:2 115:2<br><b>indicates</b> 43:23 172:20<br><b>individual</b> 1:10,10,11 43:19 61:20<br>65:6 66:10 98:5 99:2 106:4 143:5<br>152:14 168:12<br><b>individuals</b> 67:3 94:10 102:11<br>131:14 132:5 149:4,10,13 150:15<br>150:25 151:2,4,6,24 152:22<br>153:22,25 157:19 159:7,11<br>160:16 | <hr/> <b>J</b> <hr/> <b>J.D</b> 10:11<br><b>James</b> 15:9<br><b>January</b> 50:16,22,25 51:11 52:14<br>86:5 114:10 147:12 157:20 158:9   | <hr/> <b>K</b> <hr/> <b>K</b> 182:2<br><b>KANE</b> 2:3<br><b>keep</b> 94:18 95:2<br><b>kept</b> 39:10 56:10   |

|   |  |  |
|---|--|--|
| <p><b>key</b> 136:20 171:2,2,21,23,24<br/> <b>kind</b> 58:20 107:12 118:7<br/> <b>knew</b> 119:14<br/> <b>knocked</b> 176:22<br/> <b>know</b> 6:12,16,20 7:7 8:4 11:20,24 12:8 19:10,22 20:6 21:11 22:21 22:24 24:25 30:2,9,15 38:21,23 39:16 41:7 42:3,19 48:18 49:13 63:4,5 68:2,6,9,17,25,25 69:9,13 69:14 70:6,8,9,12 71:2,16,17 72:8 72:17,22 75:22,23 77:8,12,17 78:25 81:4,15 82:14 85:3 87:17 87:22,25 88:6 90:6 92:22 94:19 95:22,24 96:4,11,21,23,24 97:3 97:14,20,23,24 99:23 104:13 105:12,14,15,18,19,21,25 106:3 106:20,22 108:10,20,23 109:8,14 109:17,18,21 110:20 111:23 115:11 116:9,13 117:12,13,20 118:3,8 119:12,15,17 120:13,24 121:20 124:17,22,23 125:7,9,12 126:11 129:15,21 130:10,22,24 132:18 137:4 140:11,15,17,25 141:8 142:22 150:23 151:2,25 152:8 153:18,21 155:24 159:3 165:10 166:15 169:9 177:17 180:19,21<br/> <b>knowing</b> 92:7 159:6 175:5<br/> <b>knowledge</b> 5:9 14:9 111:4,6 134:2 137:9 167:18 169:10,15 170:4,10<br/> <b>knows</b> 72:2</p> <hr/> <p style="text-align: center;"><b>L</b></p> <hr/> <p><b>L</b> 1:1 2:1,5,14 3:1 4:1 5:1,15,15 182:2<br/> <b>label</b> 116:12<br/> <b>labeled</b> 10:9 13:25<br/> <b>labor</b> 14:12,25 15:3,5 18:11,20 19:17,19,24 20:2,3,4,5 21:7,13,17 22:6 31:18 35:6,23 36:9,12,17 37:5 38:10,10 40:2,16,22 41:17 42:4 43:9,11 45:16 46:8,14 47:17 57:24 61:4,7,19 62:15 63:3,6 65:8 65:20,24 66:6,7 73:4 76:25 92:5,7 92:19,21 99:4,8,20,22 100:20 102:13,20,21,24 105:16,16 106:17 114:15,25 122:19 123:10 126:25 138:23 139:17 140:10 141:10 143:13,23 145:19 150:6 150:13,23 151:2 152:12,19 153:19 159:8 172:8,9,22<br/> <b>Labor's</b> 138:18 140:2<br/> <b>lack</b> 53:21 79:24 125:20 127:22 146:15 165:25<br/> <b>lacked</b> 154:15<br/> <b>language</b> 123:16<br/> <b>larger</b> 148:24 149:12<br/> <b>Latin</b> 19:7</p> | <p><b>law</b> 4:19 7:20 15:8,9,15,22,23,24 16:9,12,15,15 53:9 54:4,5,8,17,19 54:25 55:10,12,20 56:3,25 58:23 59:16,17,17,24,25 61:11 78:2 79:7 81:8 82:12 88:22 90:7 94:2,6 117:21,23 118:2 152:5<br/> <b>laws</b> 55:23 56:6<br/> <b>lawsuit</b> 6:6<br/> <b>lawsuits</b> 17:20<br/> <b>lawyer</b> 92:7,15,20,21 94:5 144:10 145:18,22 149:21 152:5,14 155:12<br/> <b>lawyer's</b> 143:24<br/> <b>lawyers</b> 36:9 44:16 45:3,21 82:13 135:24 136:19 149:20 172:2<br/> <b>layer</b> 44:13<br/> <b>lead</b> 88:6<br/> <b>leader</b> 179:17<br/> <b>leads</b> 144:10 145:9 146:4<br/> <b>learning</b> 102:7 176:9<br/> <b>lectured</b> 59:13,15 63:3<br/> <b>lectures</b> 59:24 60:6,17,25 61:10,14 61:17,18,21 62:8<br/> <b>led</b> 144:19<br/> <b>left</b> 12:20 47:12<br/> <b>left-hand</b> 13:10<br/> <b>leg</b> 90:7<br/> <b>legal</b> 19:13 53:22,23 54:2,12 55:14 56:23 57:4,21 64:23 66:4 73:21 74:22 75:18 79:18 92:16,18,24 93:25 119:15 120:7,25 124:22 125:6 144:18 146:9 155:13 170:16,17 171:18 172:23 179:24<br/> <b>length</b> 146:16 173:2<br/> <b>let's</b> 24:9 28:6 48:13 72:14 84:5 90:9 94:23,25 103:21,24 136:3 147:6<br/> <b>level</b> 14:25 47:23 111:5 112:24 143:25 150:12 167:18 168:12,13 168:24 174:23 177:25 178:3<br/> <b>levels</b> 14:12<br/> <b>leveraging</b> 44:5<br/> <b>Lex</b> 18:7<br/> <b>Lexington</b> 2:16<br/> <b>liability</b> 60:4<br/> <b>license</b> 79:4,16,17 80:20 82:8 83:14 83:15,19 85:6 92:25 93:17<br/> <b>licensed</b> 15:20 16:5,8,11,14 73:18 73:19,20 75:16 78:2 79:7 80:22 85:10,13,19 88:9 89:6 90:6 93:3 93:10,19,22 94:6 117:25 144:23 174:17<br/> <b>licenses</b> 79:23 83:16<br/> <b>licensing</b> 79:12 80:7 88:3 91:13<br/> <b>licensure</b> 80:13 81:3,4,10 85:22 91:21 92:8,12 146:15<br/> <b>life</b> 72:5<br/> <b>lifetime</b> 46:9 48:8,9</p> | <p><b>Likewise</b> 64:22<br/> <b>limine</b> 118:22<br/> <b>limit</b> 107:20<br/> <b>limitation</b> 91:21 118:24 119:21 122:6 123:7 125:18 128:13<br/> <b>limited</b> 18:20 47:16 131:14<br/> <b>line</b> 25:12 49:4 72:11 74:13 85:7 134:12<br/> <b>lines</b> 95:14<br/> <b>Linked-In</b> 44:3<br/> <b>list</b> 25:21 26:16,24 27:3 173:13<br/> <b>listed</b> 59:10 81:17 83:24 114:8 167:3,7 173:14 174:22 178:23<br/> <b>listing</b> 84:20<br/> <b>listings</b> 166:18<br/> <b>lists</b> 82:7 83:7<br/> <b>literature</b> 59:4<br/> <b>litigate</b> 97:7<br/> <b>litigation</b> 4:20 33:9,25 59:25 60:4 60:21,21 137:6<br/> <b>little</b> 38:22 89:18,19 161:7<br/> <b>live</b> 112:6<br/> <b>LLP</b> 2:3,7,10,15<br/> <b>loads</b> 179:23<br/> <b>locate</b> 101:6<br/> <b>locations</b> 4:10<br/> <b>long</b> 19:19 41:9 48:19 58:24 88:15 88:21 94:19 106:4 126:4,12,19 141:18 148:7,23 150:19 153:15 154:21 157:9 158:21 160:9 161:25 162:15,18 164:3,23 165:5 166:6<br/> <b>longer</b> 53:5,7 94:16 143:5<br/> <b>longest</b> 148:8 151:14,18<br/> <b>look</b> 28:6 30:7,14,21 37:11,17 75:14 84:24 86:24 102:18 105:24 108:25 109:7,24 128:17,21 129:10,18 130:6,8 133:12 135:4 139:25 140:9 141:9 146:7 150:22 153:19 154:2 156:12 157:11 169:13 170:9<br/> <b>looked</b> 36:14 38:24 76:20,25 87:5,9 87:12,13 114:17 163:15,20 167:4<br/> <b>looking</b> 29:5 38:15 43:24 51:8 75:24 78:7 84:19,22 85:16 109:16 109:20 110:2,14,22 113:23 114:11 116:2 133:3,4 148:7 158:8 160:2,4,8,11,12,14 161:16,23 162:11,12,23 164:19<br/> <b>looks</b> 60:21 128:24 152:8<br/> <b>loose</b> 37:25<br/> <b>loss</b> 46:9 48:7,8 61:15 64:19<br/> <b>lost</b> 159:10<br/> <b>lot</b> 77:10 107:5<br/> <b>loudly</b> 6:13<br/> <b>low</b> 155:19<br/> <b>lower</b> 168:13 176:8,11,19 177:21,25 178:6,15,19 180:20</p> |
|---|--|--|

|   |  |   |
|---|--|---|
| <p><b>lowering</b> 167:22 168:9,11<br/> <b>lowest</b> 148:3 153:20<br/> <b>lunch</b> 48:18 94:15<br/> <b>luncheon</b> 95:3<br/> <b>lunchtime</b> 48:16<br/> <b>lying</b> 18:9</p> <hr/> <p style="text-align: center;"><b>M</b></p> <hr/> <p><b>M</b> 182:2<br/> <b>M-C-G-U-I-G-A-N</b> 112:3<br/> <b>M.A.C</b> 10:12<br/> <b>M.B.A</b> 10:11<br/> <b>Machines</b> 121:18<br/> <b>madam</b> 16:23 125:3<br/> <b>maintain</b> 43:14<br/> <b>majority</b> 40:18,25 41:6,12 44:22 154:10,10<br/> <b>making</b> 111:20 112:13 144:4 145:19 165:5 172:25 176:4,12<br/> <b>management</b> 129:3,8 131:17,22,24 132:2 138:14 139:15,23 140:5,7 141:8 142:9 148:14 149:18 151:23 153:22<br/> <b>managerial</b> 132:6<br/> <b>manner</b> 4:16<br/> <b>MANSUKHANI</b> 2:10<br/> <b>manufacturing</b> 129:5 148:11 149:16,18 151:5 152:7,15 162:2 164:4,11 170:24<br/> <b>March</b> 90:21 173:10<br/> <b>marginal</b> 61:15<br/> <b>mark</b> 10:3,5 24:9 103:24<br/> <b>marked</b> 10:6 24:10 78:11,18,21 104:2<br/> <b>market</b> 15:5 31:18 35:6,23 36:9,17 38:10 46:14 47:18 61:7,19 65:24 66:8 75:18 76:2,20 81:6 92:19 114:16 115:2 122:19 123:10 166:20,24 167:10,14 171:18 172:9,23 174:25<br/> <b>marketplace</b> 36:13 40:23 45:21 76:22 114:17 167:11 172:19<br/> <b>marriage</b> 184:11<br/> <b>Maryland</b> 16:7,15 88:17,19 89:12 89:15<br/> <b>Master</b> 14:4,8,24<br/> <b>Master's</b> 14:6,12<br/> <b>Masters's</b> 14:11<br/> <b>match</b> 83:22 92:11<br/> <b>material</b> 27:9 32:13,17 161:17<br/> <b>materials</b> 21:24 26:16 36:5 37:18 43:2 99:24 133:2,5<br/> <b>math</b> 51:16<br/> <b>mathematical</b> 155:2<br/> <b>matter</b> 9:12,20 11:4,8,12,21 16:4 16:22 17:5 18:8,13 19:2 21:13 22:11,25 24:21 25:10 26:17 27:9 28:2 29:13,25 30:6,10,16 34:18</p> | <p>37:2 40:2,24 42:23 46:13 56:9,12 56:14,15 57:9 59:23 60:16 61:18 65:3 68:2 73:20,23 85:9 98:20 114:14 118:17 119:10,12,19 122:5 123:5,13 125:15,25 126:21 127:22,25 128:4,15 132:8,11,12 135:6 176:25 184:14<br/> <b>matters</b> 19:13,22 21:3,7 39:16 40:10 41:8,18 57:25 63:20,21,21 65:19 98:22 123:3 132:11 134:16 134:22 170:17<br/> <b>Matthew</b> 2:5 6:5<br/> <b>MBA</b> 14:17,19,23<br/> <b>McCaul</b> 121:15<br/> <b>McGuigan</b> 112:3,15,16<br/> <b>McGuigan's</b> 112:20<br/> <b>MD</b> 131:15<br/> <b>MDR</b> 89:22<br/> <b>mean</b> 6:19 38:18 65:10 72:10 109:10 112:7 134:10 148:7,8,24 156:21,24 157:17 158:19 159:21 160:20 161:3,3,5 170:13 173:19 178:21 180:7,13<br/> <b>meaning</b> 134:7,16 151:3<br/> <b>means</b> 19:6,8 71:22 72:7 142:20<br/> <b>measured</b> 160:17,18<br/> <b>measuring</b> 141:17,18<br/> <b>median</b> 147:9 148:24 156:24 157:17 159:19,22<br/> <b>medical</b> 8:19,23<br/> <b>medication</b> 8:15<br/> <b>medium</b> 152:3<br/> <b>meet</b> 140:19<br/> <b>meeting</b> 4:12 174:25 179:3<br/> <b>meetings</b> 178:9<br/> <b>member</b> 15:19 58:22<br/> <b>memorized</b> 121:9 129:19,20 130:10 132:4<br/> <b>memory</b> 8:24 23:14 121:13<br/> <b>mentioned</b> 18:2,21 47:20 85:24 177:14<br/> <b>mere</b> 79:24 82:13<br/> <b>messes</b> 107:8<br/> <b>met</b> 80:13 110:6 112:14<br/> <b>methodology</b> 115:10,12,15,17 147:2<br/> <b>Metro</b> 45:5,22 75:15 155:12 172:2<br/> <b>metropolitan</b> 77:3,4,22<br/> <b>micro</b> 64:5<br/> <b>mind</b> 116:15<br/> <b>minimum</b> 43:15 95:18<br/> <b>minority</b> 154:17<br/> <b>minute</b> 94:23<br/> <b>minutes</b> 48:19,20 105:10 132:10 175:15<br/> <b>mis-worded</b> 106:14<br/> <b>Mischaracterizes</b> 68:23<br/> <b>misleading</b> 19:5</p> | <p><b>missed</b> 47:3<br/> <b>misstate</b> 39:5<br/> <b>mitigate</b> 46:18 53:10 54:9 82:18,25 86:8 119:2 122:8,23 123:9,17,19 167:19 177:7,15,18<br/> <b>mitigating</b> 36:16<br/> <b>mitigation</b> 55:2 56:13 125:17 126:9 127:16 168:3 177:10<br/> <b>Mitsubishi</b> 1:8,9,9 2:16 49:6 51:3,5 74:24 75:19 76:19 79:15,19 82:19 87:22 89:2 90:21 91:3,16 135:4 135:15 143:10,17 147:19 148:11 148:12 166:11,16 169:22 171:19 172:12<br/> <b>Mitsubishis</b> 2:11<br/> <b>model</b> 169:4,7<br/> <b>models</b> 33:7 61:16 64:19<br/> <b>moment</b> 24:5 113:3<br/> <b>moments</b> 25:23<br/> <b>month</b> 50:5,18<br/> <b>monthly</b> 52:3<br/> <b>months</b> 52:4 124:11 147:21,25 148:9 149:6 158:17<br/> <b>morning</b> 6:4<br/> <b>mother</b> 155:8<br/> <b>mother's</b> 53:13<br/> <b>motion</b> 117:11 118:22 120:12 121:2<br/> <b>move</b> 7:4 72:14<br/> <b>Moving</b> 113:20<br/> <b>MSA</b> 77:2 122:20 145:16<br/> <b>muffled</b> 28:14<br/> <b>multiple</b> 107:7 132:11 146:12 165:14 178:5<br/> <b>Musacchia</b> 1:22 4:23 5:17 184:4,19</p> <hr/> <p style="text-align: center;"><b>N</b></p> <hr/> <p><b>N</b> 1:1,1 2:1,1,2 3:1,1 4:1,1 5:1,1 182:2,2 183:2<br/> <b>NACVA</b> 66:3<br/> <b>name</b> 5:22 6:4 112:10,10<br/> <b>national</b> 13:17,21 79:18<br/> <b>nature</b> 60:6 74:2 143:3<br/> <b>Navigators</b> 126:2,3<br/> <b>necessarily</b> 178:24<br/> <b>need</b> 93:17 135:25 159:15<br/> <b>needed</b> 21:23<br/> <b>needs</b> 91:23<br/> <b>negotiate</b> 179:8 180:10<br/> <b>negotiating</b> 179:4<br/> <b>negotiations</b> 34:8<br/> <b>never</b> 37:25 66:19 75:22 90:8 110:6 112:7,14<br/> <b>New</b> 1:2,24 2:4,8,8,13,13,17,17 5:18 16:6,8 43:9,11 44:9 45:5,6,15,22 54:8 75:15 77:23 78:3 79:8,10,15 79:16,20 80:3,20,22 82:8 83:14 85:11,14 86:6,20 87:3,8,15,17,23 88:3 90:18,21 91:4,13,15,19</p> |
|---|--|---|

|   |   |   |
|---|---|---|
| <p>95:12,17 99:22 102:20 107:19,22<br/>124:18,24 125:14,16 128:7<br/>155:12 172:2 182:4,24 184:5<br/><b>Newark</b> 45:6<br/><b>newly</b> 164:24<br/><b>news</b> 152:20<br/><b>Nicholas</b> 1:9 2:12<br/><b>night</b> 89:20<br/><b>nine</b> 25:5 26:7 144:20 145:20<br/>147:21,24 148:9 149:6 151:8<br/>172:11<br/><b>non-CEO</b> 141:6<br/><b>non-litigation</b> 33:14,23 34:4,6<br/><b>Non-Party</b> 1:20<br/><b>nonresponsive</b> 86:13<br/><b>north</b> 39:2 40:5<br/><b>Notary</b> 1:23 3:17 5:17 182:24 184:4<br/><b>noted</b> 72:13<br/><b>Notice</b> 1:21<br/><b>November</b> 29:20 31:2 56:5,10<br/>57:14,17<br/><b>number</b> 23:4 35:7,8,10 39:17 44:25<br/>51:19,20,24 129:5,6 166:5,8<br/>171:17 173:12 174:15 178:24</p> <hr/> <p style="text-align: center;"><b>O</b></p> <hr/> <p><b>O</b> 1:1 2:1 3:1 4:1 5:1 182:2<br/><b>O*NET</b> 168:19,21,23 169:3,9<br/><b>oath</b> 4:8 7:19 182:9<br/><b>object</b> 71:20 86:12<br/><b>objection</b> 5:2,4 7:12,14 27:23 28:21<br/>31:9,13 32:7,14 35:19 37:14<br/>39:24 42:6 51:17 53:25 54:14<br/>65:14 68:22 72:13 73:9 74:8,12<br/>79:13 80:23 81:18 82:3 83:11<br/>92:2 101:4,23 102:9 105:9 106:7<br/>106:19 110:19 111:10 121:3<br/>122:16 124:15 125:10 126:15<br/>127:12 128:3,9,19 129:16,22,25<br/>130:15,21 131:3,7,11,19 132:3<br/>133:10,18,23 135:19 136:11,18<br/>137:7,13 138:9 139:9 141:16<br/>142:15 143:21 144:11 146:6,11<br/>149:2,15 150:4,21 156:14 157:5<br/>157:14 158:6,23 165:24 166:14<br/>166:23 168:5 169:5,11 171:12<br/>176:5,16,21 177:8 178:17 179:10<br/>179:14 180:6<br/><b>objections</b> 3:11<br/><b>obligation</b> 86:7<br/><b>obligations</b> 89:22 92:24,24<br/><b>obtain</b> 162:3<br/><b>obtainable</b> 83:17<br/><b>obtained</b> 104:6 148:6 155:7,18<br/><b>obtainment</b> 75:21<br/><b>obviously</b> 67:21 97:3 144:21,24<br/>146:19 155:7 159:20 174:16<br/><b>occupation</b> 34:14 44:18 139:6</p> | <p>149:5 171:8 177:24<br/><b>occupational</b> 139:11<br/><b>occupations</b> 129:4,9 136:5 138:15<br/>139:16,23 140:8 142:10 148:15<br/>149:19 150:5 151:23 153:23<br/><b>October</b> 28:17,20,23 52:22<br/><b>off-the-record</b> 153:5<br/><b>offer</b> 92:17,18 99:16 127:10<br/><b>offered</b> 87:23 92:18 144:7<br/><b>offering</b> 54:2,12<br/><b>offers</b> 87:18<br/><b>office</b> 79:20<br/><b>office's</b> 20:14<br/><b>officer</b> 136:21 141:4 150:10 172:14<br/><b>officers</b> 139:24 140:13<br/><b>okay</b> 8:12 12:16 26:23 29:6 33:3,17<br/>33:22 35:3 36:18 39:15 41:13<br/>48:9 52:8 57:4 69:9 72:15 85:5<br/>94:13 104:14 110:3 114:8 115:16<br/>126:3 150:18 159:25 162:22<br/>163:20 164:15 169:3 172:4<br/><b>Old</b> 2:4<br/><b>older</b> 64:15 143:5 151:12,18<br/><b>Oliva</b> 1:9 2:12<br/><b>once</b> 80:13 93:9<br/><b>ones</b> 14:22 46:23<br/><b>ongoing</b> 52:14 82:24<br/><b>online</b> 43:3 44:4<br/><b>onward</b> 160:3 178:16<br/><b>open</b> 89:22<br/><b>opening</b> 180:12<br/><b>operating</b> 67:15<br/><b>operation</b> 68:5<br/><b>opine</b> 18:18 124:19<br/><b>opined</b> 171:17<br/><b>opinion</b> 43:8 44:13,25 45:10 47:25<br/>53:23 54:2 86:9 91:24 92:4,6,17<br/>92:18 100:15 113:13 114:14<br/>119:2,16 122:7,11,13,23 123:4,8<br/>125:6,18,21 126:4,18,23,25 127:3<br/>127:6,13,17,21 128:11 147:17<br/>155:10<br/><b>opinions</b> 26:19 27:25 42:17,23<br/>44:14 45:25 46:21 47:21 92:19<br/>100:22 114:24 119:3 126:7,10,12<br/>128:14 171:9<br/><b>opportunities</b> 31:20 35:9,11 44:25<br/>45:2,7,12,14 46:15 47:18 62:9,10<br/>65:6,13 74:21,24 75:15,19 76:7<br/>76:15 80:4,9,11,12,16 81:6 82:25<br/>83:6 85:17,19,21 91:13,22 124:14<br/>146:17 155:11 168:25 169:2<br/>171:18 172:10,24 173:6,11 175:8<br/>175:10 176:11 177:3 178:5<br/>180:22<br/><b>opportunity</b> 15:18 80:3 81:14<br/>82:15,16 84:14 86:10 146:20<br/>173:8,17 175:24 176:13 177:2</p> | <p><b>order</b> 9:10 16:15 181:10<br/><b>organization</b> 66:3 67:6 179:16<br/><b>organizational</b> 58:9,11 67:24 68:7<br/>68:14,20 69:6,10,20 72:19,25<br/>73:7<br/><b>outcome</b> 155:6 157:4 184:14<br/><b>outer</b> 72:6<br/><b>outlier</b> 154:16<br/><b>outline</b> 18:17<br/><b>outlined</b> 144:20 170:6<br/><b>outside</b> 60:22 100:2 112:14,25<br/>136:10 159:21 170:22<br/><b>overall</b> 23:8 73:24 148:4 150:22<br/><b>overbroad</b> 37:16<br/><b>overlap</b> 171:21 172:6<br/><b>overly</b> 73:15<br/><b>oversight</b> 132:6<br/><b>overview</b> 110:14<br/><b>overwhelming</b> 44:21 154:10</p> <hr/> <p style="text-align: center;"><b>P</b></p> <hr/> <p><b>P</b> 2:2,2<br/><b>P-H</b> 11:18<br/><b>p.m</b> 181:14<br/><b>pace</b> 41:21<br/><b>page</b> 24:14,17,20 25:5 26:11 45:10<br/>47:8 48:22 64:13 78:8,13,16,21<br/>84:18,23 95:6,7 98:3 100:23<br/>104:9,20 106:21 108:17,21<br/>113:23 114:2 137:16 144:20<br/>145:20 147:6 170:7,19 171:23<br/>172:11 174:19 183:3,7,13<br/><b>pages</b> 10:15 26:7<br/><b>paid</b> 23:16 107:14 178:12<br/><b>pair</b> 40:15<br/><b>pairing</b> 40:20 62:15 63:4<br/><b>pandemic</b> 33:20<br/><b>panel</b> 12:20 13:10<br/><b>paper</b> 110:18,20 121:5<br/><b>papers</b> 93:22<br/><b>paperwork</b> 83:20<br/><b>paragraph</b> 51:9 95:15 98:3 113:9<br/>114:9 116:20 147:8,13<br/><b>parameter</b> 83:5<br/><b>paraphrasing</b> 35:5<br/><b>Park</b> 2:12<br/><b>parse</b> 92:22<br/><b>part</b> 16:24 28:13 31:25 32:13 55:4<br/>76:14 114:22 115:14 123:13<br/>131:24 148:12 159:17<br/><b>participant</b> 8:5<br/><b>participating</b> 4:11<br/><b>participation</b> 152:12<br/><b>particular</b> 12:3 27:8 43:5 56:7,9<br/>59:20 73:22 74:3 98:20 116:11<br/>146:4<br/><b>parties</b> 1:21 3:5 4:4,17 184:12<br/><b>pass</b> 15:18 175:6</p> |
|---|---|---|

|   |  |  |
|---|--|--|
| <b>Patrullo</b> 121:11<br><b>pay</b> 18:17 168:13 176:18 177:19 178:20<br><b>paying</b> 176:3 178:15<br><b>pays</b> 177:3<br><b>PDF</b> 10:9 104:5 108:17<br><b>peer</b> 105:12 113:15<br><b>pending</b> 56:14 78:23<br><b>Pennsylvania</b> 6:3 16:7,12 59:18,19 61:2 63:2 117:22 118:4<br><b>people</b> 36:14 40:24 44:16 115:2 151:17 160:9,14<br><b>perceived</b> 127:4,18<br><b>percent</b> 33:4,20,24 34:2,2,4 148:6 153:21,24 154:6 159:13<br><b>percentage</b> 33:10 41:2 153:20<br><b>perfect</b> 83:22<br><b>perform</b> 21:14 31:15 34:10 35:16 43:12 46:18 55:14 56:23 57:5 95:19<br><b>performed</b> 34:17 63:24,25 68:19<br><b>period</b> 41:13,19 44:20,23 45:4 49:18 50:15 51:21 52:10,19,25 53:5,7,8 57:13 75:24 77:16,20 87:4,20 88:25 89:5 91:14 114:21 147:20,24 148:21 156:2 157:13 158:8,9 159:10,12 161:6 165:2 177:22 178:14<br><b>periods</b> 159:22,24<br><b>permanent</b> 46:9<br><b>permissible</b> 56:16 57:5,18,20,22 119:4 128:14<br><b>permitted</b> 4:7 118:22 119:18 122:10 123:5,17 125:16,20 126:24 127:14<br><b>persists</b> 53:18<br><b>person</b> 41:10 73:25 74:3 93:20 99:11 101:18 102:5 106:17 112:5 112:9,11,23,24 141:19 164:10,24 165:17 166:4 168:18<br><b>person's</b> 41:5 66:8 112:7 164:20 165:23<br><b>personal</b> 17:21<br><b>personally</b> 39:12<br><b>persuing</b> 82:17<br><b>pertain</b> 11:7<br><b>pertains</b> 68:3<br><b>Philadelphia</b> 6:3 17:12<br><b>phrase</b> 115:21<br><b>physically</b> 4:25<br><b>pic</b> 10:4<br><b>picked</b> 84:24<br><b>picture</b> 110:24<br><b>piece</b> 110:18,20 115:19<br><b>place</b> 1:22 77:13,18 175:4<br><b>placement</b> 44:6<br><b>plaintiff</b> 1:5 2:3 37:22 38:6,16,25 40:11,12,24 56:13 65:23 122:7,11 | 124:10 125:2 126:5,8,9,14,20 128:2 137:9 174:12,21<br><b>plaintiff's</b> 78:11,19 108:12,14,15 121:23 122:14 123:21 127:15 128:6 135:8,18 167:18 168:3 183:7<br><b>Plan</b> 104:11<br><b>plant</b> 170:25<br><b>platform</b> 4:12<br><b>Plaza</b> 2:12<br><b>pleadings</b> 93:25<br><b>please</b> 5:22,24 6:11,15,23 7:8 8:3,9 25:5 32:19 42:16 48:18 55:6 69:22 70:2 74:9 75:9 84:6,18 108:6 113:21 130:4 142:18 147:15 174:10 181:11<br><b>plentiful</b> 124:13<br><b>plugged</b> 104:6<br><b>plus</b> 19:21 47:21<br><b>point</b> 21:24 53:11 80:25 86:21,22 87:11,12,25 90:22 91:2 134:23 148:3 159:22 160:10 161:5 163:5 177:2<br><b>points</b> 148:16,18 171:23<br><b>pole</b> 47:9<br><b>population</b> 38:12 107:23 139:17 151:8,8,13 152:2,8 153:21 154:6 154:17 155:18,20 156:17,18 157:9,11 158:3,4 159:13,17<br><b>portion</b> 12:3,5 13:5,25 32:3,20 33:12 47:4 65:18,20,25 66:6,7 86:13 108:7 114:2<br><b>pose</b> 7:15<br><b>position</b> 41:11 67:5 73:21 82:9 175:4 179:7<br><b>positions</b> 53:22 75:21 81:17 155:13 155:13 169:16 178:12<br><b>positive</b> 142:13,23<br><b>possess</b> 131:14<br><b>possession</b> 109:23 113:4<br><b>possibility</b> 85:25 180:10<br><b>possible</b> 8:9 71:12 175:9 178:6 179:21<br><b>possibly</b> 47:3 140:6<br><b>post</b> 31:23 35:13 102:20 173:5<br><b>posted</b> 86:3 99:21 173:3,18,23 174:4,13 176:6,7 179:7 180:7,8<br><b>poster</b> 173:13,13<br><b>posting</b> 80:6,20 82:8 165:16 178:14<br><b>postings</b> 74:18 85:3,4 133:13 134:20 167:3,7 178:11<br><b>posts</b> 135:25 152:22<br><b>potential</b> 31:19 35:9,11 62:9 81:14 82:16<br><b>potentially</b> 12:9<br><b>power</b> 154:21,25 155:22 156:13 157:3,19,24<br><b>practice</b> 16:9,12,14,15 17:18 20:15 | 23:8 60:10 78:2 79:7 82:13 94:5 117:21,23 143:9,19 171:20<br><b>practiced</b> 69:5 90:8 118:2<br><b>practices</b> 70:24 74:16 81:5 143:24<br><b>practicing</b> 83:21 89:20 90:20 94:2 135:11 152:5<br><b>practitioners</b> 102:25<br><b>precluded</b> 127:3<br><b>predict</b> 54:19 158:21 159:16 162:15<br><b>predicting</b> 157:4<br><b>prediction</b> 158:11 161:25 164:2<br><b>predictive</b> 154:21,25 155:22 156:13 157:3,7,19,24<br><b>predicts</b> 155:4 158:14 159:9<br><b>predominately</b> 43:3<br><b>preference</b> 39:13<br><b>preferred</b> 48:17<br><b>preparation</b> 9:6,17 12:23 13:14,22 14:9,20 15:12,15 29:21 32:6,10<br><b>prepare</b> 9:10 11:11 24:20 29:17<br><b>prepared</b> 9:19 12:4,10 16:22 18:15 18:16 19:2,16 23:3 120:15,21<br><b>preparing</b> 23:22 26:25 34:19 40:3 56:4<br><b>presence</b> 4:25<br><b>present</b> 2:9,20 4:4 53:19 61:15 100:9<br><b>presentation</b> 54:7 165:16<br><b>presented</b> 11:21 16:4 71:23 108:9 122:12 138:25 163:14<br><b>presenting</b> 134:15<br><b>presently</b> 17:10<br><b>president</b> 33:16 67:2,6<br><b>presume</b> 180:11<br><b>presuming</b> 180:3<br><b>pretty</b> 107:4<br><b>prevail</b> 46:5<br><b>prevent</b> 92:9 154:16<br><b>previous</b> 37:20 46:23 117:6<br><b>previously</b> 26:4 40:17 76:21,23 78:11,18 125:13<br><b>primarily</b> 17:20<br><b>primary</b> 17:18 100:5<br><b>Primavera</b> 2:14 5:6,8,13 9:13,16,25 27:23 28:21 31:9,13 32:7,14 35:19 37:14 39:24 42:6 51:17 53:25 54:14 65:14 68:22 73:9 74:8,12 79:13 80:23 81:18,23 82:3 83:11,25 84:5 92:2 94:16,21 101:4,23 102:9 105:9 106:7 110:19 111:10 121:3 122:16 124:15 125:10 126:15 127:12 128:3,9,19 129:16,22,25 130:15 130:21 131:3,7,11,19 132:3 133:10,18,23 135:19 136:11,18 137:7,13 138:9 139:9 141:16 142:15 143:21 144:11 146:6,11 149:2,15 150:4,21 153:3 157:14 |
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|   |  |   |
|---|--|---|
| 158:6,23 165:24 166:14,23 169:5<br>169:11 171:12 176:5,16,21 177:8<br>178:17 179:10,14 180:6 181:5,11<br><b>principle</b> 69:14<br><b>prior</b> 29:24 30:4 31:2 44:5 55:11<br>76:18 174:5 176:4<br><b>private</b> 170:18 171:20<br><b>privileged</b> 8:10<br><b>pro</b> 16:17 20:22 21:13<br><b>probably</b> 135:21 157:16 177:13<br>179:12<br><b>problematic</b> 92:24<br><b>procedure</b> 4:5 23:11 66:22 134:6<br>146:2<br><b>procedures</b> 67:8,12<br><b>process</b> 12:7 21:11 65:17 66:25<br>81:11 115:23 116:3,13,16,18,23<br>117:2,5,9,15 118:6,15,24 128:16<br>132:21 179:5<br><b>processional</b> 1:10<br><b>produced</b> 49:11<br><b>production</b> 26:2 97:11,25<br><b>professional</b> 1:10,11 58:3 63:14<br>129:4,9 130:16,17 131:14,20,22<br>138:15 139:23 140:18 142:10<br>148:14 149:18,21 151:23 152:15<br>153:23<br><b>professionals</b> 99:15 130:11,14,23<br>131:5,9,13 139:15 140:7 141:15<br>149:17,20<br><b>professor</b> 58:14,16,18<br><b>professorships</b> 59:12<br><b>profit</b> 21:16<br><b>program</b> 14:11,23 15:3,7<br><b>prohibitive</b> 180:2<br><b>project</b> 66:11 93:16 94:4 179:18<br><b>projects</b> 34:4,6,11 93:20<br><b>promotion</b> 70:15,17,18 71:18 74:17<br><b>promotions</b> 74:18<br><b>pronouncing</b> 132:23<br><b>proper</b> 57:21 125:21<br><b>properly</b> 100:18 127:18,19<br><b>proportion</b> 33:17,22<br><b>provide</b> 9:22 11:3 20:16 21:19,22<br>23:23,24 29:23 30:23 31:3 32:25<br>35:23 36:5,7 69:2 124:4 127:4<br>138:25 150:15 152:18,22<br><b>provided</b> 7:23 9:24 10:23 17:3<br>20:22 23:19 24:7 26:4,16,18,21<br>26:22 28:3,22,23 29:12 31:22<br>35:12,25 36:25 37:7 43:2,17<br>96:20 100:7 122:9 126:7<br><b>providing</b> 8:10 15:4 17:4 19:19<br>22:4,8 31:2 36:18 148:17 170:16<br><b>proxies</b> 152:18<br><b>Psychological</b> 68:4<br><b>psychologist</b> 58:7,9,12 73:11<br><b>psychologists</b> 68:7 69:6,20 | <b>psychology</b> 63:8,11 67:24 68:15,20<br>69:10 72:19,25 73:8<br><b>public</b> 1:23 3:17 5:17 19:6,9,13<br>55:19 182:24 184:4<br><b>publication</b> 138:24<br><b>publications</b> 59:7,9 103:4<br><b>published</b> 59:2,4 133:13 155:14<br>163:23,24 164:22<br><b>pull</b> 10:3 24:6 37:19 78:10 95:5<br>103:21<br><b>pulled</b> 105:24 134:18 161:3<br><b>purpose</b> 4:19 19:15<br><b>purposes</b> 149:11<br><b>purring</b> 80:15<br><b>pursuant</b> 1:21 4:4 20:10<br><b>pursue</b> 74:22<br><b>pursued</b> 31:21 75:20 80:4,17<br>172:15,23 178:8 180:17<br><b>put</b> 22:24 24:4 38:19 42:20 47:17<br>95:15 122:21,22 134:20 137:23<br>138:7 141:12 151:13 175:3<br><b>putting</b> 122:17 | <b>quickest</b> 148:3<br><b>quickly</b> 115:5 |
| <b>R</b>  |  |   |
| <b>R</b> 2:2 5:15 184:2<br><b>R-O-N-A</b> 28:10<br><b>range</b> 39:20 148:15<br><b>ranged</b> 147:11<br><b>ranging</b> 147:20<br><b>rate</b> 22:13,15,18,21 23:20 176:11<br>176:20 178:23 179:19 180:20<br><b>rates</b> 22:23 34:9 139:13 141:14<br>142:2 176:19 178:20<br><b>Raytheon</b> 171:19<br><b>re-asking</b> 135:21<br><b>re-employed</b> 114:20 154:7 159:14<br><b>re-employment</b> 43:25 44:20 148:6<br>151:19 153:16,25 154:23 155:19<br>155:21,25 156:7 157:10,13,21<br>158:22 162:3 164:6 165:7 166:7<br><b>reach</b> 36:3 60:5 147:2<br><b>reached</b> 86:10<br><b>reaching</b> 124:10 178:25<br><b>reacquainted</b> 9:11<br><b>read</b> 31:24 32:4 55:5,7 69:22,24<br>70:3,5 74:10 81:25 82:2 84:8,10<br>84:12 86:15,16 106:10,12 108:2,6<br>108:8 113:17 121:25 122:2 125:4<br>125:5 126:23 127:6 130:3,5<br>142:17,19 169:19 182:8<br><b>reads</b> 147:16<br><b>ready</b> 25:2<br><b>real</b> 53:12,13,13,17 112:11 131:10<br>155:8 157:10 168:7<br><b>really</b> 37:25 38:21 71:21 138:10<br>178:2<br><b>realm</b> 180:9<br><b>reason</b> 79:14 179:2<br><b>reasonable</b> 44:11 45:19 46:17,18<br>48:3 95:10 98:6 99:10 114:20,24<br>122:22 123:21 124:20 147:17<br>172:18<br><b>reasonableness</b> 41:4 121:22 122:14<br><b>recall</b> 21:12 29:22 31:5,11 34:24<br>61:25 62:6,13,17 63:5 101:9,14<br>103:10,14,15,20 105:10 126:10<br>128:4,10,12,20,23 129:11 140:4<br>142:4<br><b>receipt</b> 76:5 96:6,9<br><b>receive</b> 28:11,15 29:8 30:18 31:6<br>42:12 65:11 95:17 96:7<br><b>received</b> 14:6 25:25 28:8 53:2 63:19<br>64:22 66:12,16 67:17 79:22 96:13<br>96:24 159:23<br><b>recess</b> 48:21 95:3<br><b>recipient</b> 95:18<br><b>reciprocity</b> 83:19 85:25 86:20 87:3<br>87:8,14 91:5 94:11  |  |   |
| <b>Q</b>  |  |   |
| <b>qualification</b> 11:7 22:2 90:4<br><b>qualifications</b> 11:3,6 47:11,13<br>81:16 131:23<br><b>qualified</b> 92:9 175:7 180:19<br><b>qualify</b> 174:12<br><b>quality</b> 138:5,7 165:22<br><b>quantity</b> 165:23<br><b>quarters</b> 155:18<br><b>query</b> 135:25<br><b>querying</b> 137:24 138:3<br><b>question</b> 3:12 6:15,17,18,19,24 7:4<br>7:15 8:6 20:2 21:4 28:13 32:16,19<br>35:20 37:16 38:14 42:22 55:7<br>56:18 63:22 64:2 65:16 66:23<br>67:21,22 68:24 69:3,18,21,23,24<br>69:25 70:5,16 71:4 73:16,24 74:9<br>74:10 77:21 78:22,23 81:19,20,22<br>81:24 82:2,5 84:11,12 86:15,16<br>86:23 87:7,10,20 90:9,24 91:8<br>97:2,17 100:5,16,24 101:5,16,19<br>101:22,24 102:2,4,8 103:6,9,13<br>106:3,8,11,12,13,14,18 108:2,3<br>117:18 121:24 122:2 125:3,5<br>126:17 130:2,3,5 135:20,22<br>138:11 142:16,19 144:12 155:5<br>156:15 157:6,16,22 158:12,18<br>161:22 162:21 163:10 169:18,19<br>169:23 170:13 174:9 177:11<br><b>questioning</b> 74:13 134:13 171:14<br><b>questions</b> 6:9,11 8:10 54:20,21<br>71:20 72:11 75:11 76:4 77:20<br>107:14 125:13 146:12,22 153:9<br>180:25 181:5,7<br><b>quick</b> 42:22 81:11 161:4  |  |   |

|  |   |  |
|--|---|--|
| <p><b>recognize</b> 10:20 25:7 71:13 111:8 111:11</p> <p><b>recognized</b> 64:14 65:25 66:3,9 105:15</p> <p><b>recollection</b> 20:24 118:13,21</p> <p><b>record</b> 4:22 5:22,25 35:21 36:2 38:20 39:5 40:5 46:3,12 71:9 72:14 75:12 78:17 84:14 107:9,10 113:22 127:24 182:11,12 184:9</p> <p><b>recorded</b> 4:15 7:11 157:25</p> <p><b>recording</b> 4:16</p> <p><b>records</b> 30:8,22 34:16 35:25 39:9 39:12 159:8,9</p> <p><b>recruiter</b> 58:3 134:21</p> <p><b>reemployed</b> 115:5 141:20</p> <p><b>reemployment</b> 152:24 162:19</p> <p><b>REES</b> 2:10</p> <p><b>refer</b> 10:16 17:14 115:21 116:3</p> <p><b>reference</b> 132:25 133:4 166:11</p> <p><b>referenced</b> 27:16,21 49:25 108:21 166:21</p> <p><b>references</b> 27:11 165:8,12,23,25 166:5,9,15</p> <p><b>referencing</b> 49:10 87:20</p> <p><b>referred</b> 170:14</p> <p><b>referring</b> 41:15 48:25 64:12 69:19 98:13 110:21 116:19 120:16 125:25 132:12,25 138:19 166:25 172:6</p> <p><b>refine</b> 67:22 152:3</p> <p><b>refined</b> 38:14 77:21 139:5</p> <p><b>reflect</b> 11:2 69:16 78:17 96:13 106:16 113:22</p> <p><b>refraining</b> 8:15</p> <p><b>refresh</b> 118:13</p> <p><b>regard</b> 12:10 36:13 43:9 57:23 67:14 82:24 92:19 116:23 120:7,8 126:7 127:17 133:19 134:13 138:22 143:18 144:12 146:14 154:2 160:20 161:10 168:14,15 168:16,17,24 170:12,16 171:24 178:19</p> <p><b>regarded</b> 110:10,12</p> <p><b>regarding</b> 124:4</p> <p><b>Regardless</b> 151:17</p> <p><b>regards</b> 76:4</p> <p><b>regularly</b> 68:7</p> <p><b>REISBAUM</b> 2:7</p> <p><b>reiterate</b> 100:18</p> <p><b>reiterated</b> 98:22</p> <p><b>rejected</b> 137:2</p> <p><b>relate</b> 15:6,22 44:15,25 61:18 65:4</p> <p><b>related</b> 17:19 27:8 55:22 56:15 60:2 63:19 65:20,22 66:24 68:4 129:4 129:9 131:22 138:15 139:15,23 140:8 142:10 148:12,14 149:19 151:23 153:23 184:10</p> <p><b>relates</b> 54:6 64:18 73:16 168:11</p> | <p><b>relationship</b> 141:24 142:21,24 143:3 165:11 166:2</p> <p><b>relative</b> 65:24</p> <p><b>relatively</b> 115:5</p> <p><b>relevance</b> 16:2 141:22 152:10,17 158:10 174:18</p> <p><b>relevant</b> 25:3,4,13 27:19 31:19 35:8 36:12 37:18,19 45:11 55:23 62:10 83:20 87:4 114:3 115:12 116:5 122:19 136:13 139:2 145:15 146:18 148:19 149:23 155:16 171:4,25 173:19 178:22</p> <p><b>reliability</b> 124:5 133:8,16,19,21 134:3,5,9,16,22</p> <p><b>reliable</b> 105:23 134:14</p> <p><b>reliably</b> 150:19</p> <p><b>relied</b> 26:13,20,24 27:17 132:8 142:9</p> <p><b>rely</b> 27:3,22 28:5 144:3 164:22</p> <p><b>relying</b> 83:12 99:24 100:10,15 132:13 146:9</p> <p><b>remained</b> 47:7</p> <p><b>remaining</b> 33:12</p> <p><b>remember</b> 116:25</p> <p><b>remote</b> 4:10</p> <p><b>remotely</b> 4:6</p> <p><b>removal</b> 47:12</p> <p><b>remove</b> 45:9 47:10</p> <p><b>removing</b> 47:6 178:13</p> <p><b>repeat</b> 74:9 125:3 142:16 169:17 174:10</p> <p><b>rephrase</b> 6:16 56:8 70:2 81:23 157:6 158:12</p> <p><b>rephrased</b> 101:25</p> <p><b>report</b> 9:12,19 11:11,15,16 12:4,7 12:14,15,16,24 13:6,14,22 14:10 14:16,20 15:4,12,16 16:4,21 18:14,15,16 19:2,15 21:21,25 22:3,8,17 23:22 24:2,8,20 25:3,9 26:7,8,11,25 27:7,10,13,16,21 28:9,11,15,19,23 29:2,12,13,18 29:20,24,25 30:6,19,20,24 31:3,8 32:6,10,24 38:22 42:16,24 43:14 45:24 46:3,4 48:23,24 56:4 74:19 80:7 84:19 95:5,8,9,16 100:10,14 113:20,24 120:14,20 122:12 123:12,16 124:4 125:19 127:2,20 127:20 128:24 132:13,15 133:3 135:2 144:8,9,17,25 145:5,8,11 145:22,24 146:19 147:3,5,6 170:8 170:20 177:9,10 183:9</p> <p><b>reported</b> 51:22 122:18 158:7</p> <p><b>reporter</b> 1:23 4:2,7,23 5:8 6:20 7:7 10:2 16:23 84:8 107:6 125:4 134:8 153:4 181:9</p> <p><b>reporting</b> 4:13 158:3</p> <p><b>reports</b> 23:3 29:9 41:12 64:21 117:7</p> | <p><b>repost</b> 173:7</p> <p><b>reposted</b> 173:5</p> <p><b>represent</b> 5:9,13 104:4 106:24</p> <p><b>representation</b> 112:8</p> <p><b>represented</b> 79:3</p> <p><b>representing</b> 6:5 93:24</p> <p><b>represents</b> 52:7 53:20 151:20 159:23 170:19</p> <p><b>request</b> 8:5 47:2 74:18 82:4</p> <p><b>requested</b> 18:18 32:3 39:14 108:7</p> <p><b>REQUESTS/PRODUCTION</b> 183:12</p> <p><b>require</b> 63:21 80:7 81:2 91:6 93:21</p> <p><b>required</b> 22:3 25:14 81:17 93:19 146:3</p> <p><b>requirement</b> 82:8 83:7,14 85:6 88:3 91:21 92:8 121:7</p> <p><b>requirements</b> 87:13 90:17</p> <p><b>requires</b> 23:15 80:19 83:13 90:2,5</p> <p><b>requiring</b> 91:13</p> <p><b>research</b> 19:9 55:14,22 56:23 57:4 57:10,12 63:17,21,24,25 64:4,5,7 64:18 65:3 66:11,13 102:12 116:6 116:16,18,23 117:2,5,9,15 118:5 118:15 128:16</p> <p><b>researched</b> 105:20</p> <p><b>reserved</b> 3:12 175:13</p> <p><b>resident</b> 79:19</p> <p><b>residual</b> 168:12,18</p> <p><b>resorting</b> 39:8</p> <p><b>resources</b> 150:7</p> <p><b>respect</b> 13:9 50:19 61:10 87:7 89:16 91:18 109:13 111:22 136:4,16</p> <p><b>respective</b> 1:21 3:6 160:24</p> <p><b>respond</b> 7:14 8:6,9</p> <p><b>response</b> 7:4,10 29:3 31:25 45:23 46:11 60:23 75:7 76:12 84:3,16 101:20 115:25 125:23 139:20 144:15 152:25 154:18 156:3,16 160:5 165:3 167:24</p> <p><b>responses</b> 7:8</p> <p><b>rest</b> 7:22 117:2</p> <p><b>restate</b> 32:19 69:21 82:4 106:9 126:16 142:16</p> <p><b>restaurant</b> 151:5</p> <p><b>result</b> 63:24 104:8,10,13,14,23</p> <p><b>results</b> 104:5 106:15,20 155:4 158:15 160:3,4</p> <p><b>resume</b> 47:15 76:18,23 78:4,6,9 79:4,9 83:5 85:15 135:16 145:2 169:20 170:15 171:2,3,23 175:3 179:22</p> <p><b>retail</b> 151:4</p> <p><b>retained</b> 19:23 20:5,15 30:9,12 32:24 92:17 119:14 122:5</p> <p><b>retainer</b> 20:10,12,16,17</p> <p><b>retention</b> 30:13,14</p> <p><b>return</b> 7:2</p> |
|--|---|--|

**returns** 95:25 96:2,3,8,10,15 97:12  
 97:15,21 98:2 176:10 178:19  
**revealing** 9:14  
**revenue** 42:4,13  
**review** 12:8,9 35:25 45:24 145:12  
 176:15 179:6 180:8,14  
**reviewed** 9:12 13:3 21:24 105:13  
 120:2,4  
**Reviewers** 85:9  
**reviewing** 12:7 109:25  
**right** 8:14 18:3 24:17 28:24 34:22  
 35:14 39:20 48:11 50:9,11 51:19  
 52:11 57:2 64:2 77:3 78:5 79:2,10  
 84:21,22 85:2,11 92:5,11 93:4  
 100:23 106:21 113:10,17 115:18  
 129:24 146:12 147:13 149:11  
 156:7,18,24,25 159:14 161:8  
 163:2,14,22 167:4 172:7 173:14  
 175:2,4,22 176:7,15,20 177:15  
 178:15 179:11,13,15 180:7  
**right-hand** 157:18  
**Road** 2:4  
**Roger** 121:14  
**role** 12:6 60:3 74:20,23 172:8,14  
**roles** 60:5  
**Rona** 28:10,12,16 29:9  
**roughly** 37:4 38:9 65:19 75:23  
**rounding** 44:20  
**row** 139:14 157:22  
**rule** 4:5 23:13,15 97:20,22,23,24  
 121:8 146:2  
**rules** 23:10 75:4 83:18 107:3,4  
 134:6  
**run** 60:13 175:10  
**rush** 107:15,16

---

**S**

---

**S** 1:4 2:2 5:15 183:6  
**S-P-E-I-G-H-T-S** 118:10  
**sake** 116:11  
**salaried** 42:10  
**salary** 179:4  
**sample** 84:19  
**sat** 59:14 88:6 90:23 94:10  
**satisfaction** 24:25  
**satisfied** 88:2 90:17  
**saved** 29:21  
**saw** 25:21 80:13 95:24,25 166:19  
**saying** 64:2 82:14,14 165:18 180:9  
**says** 24:14 25:13 26:12 48:24 49:5  
 49:21 51:9 52:13 64:25 85:6,9  
 98:4 104:11,25 110:23 114:3  
 161:18,19 163:22 166:4 179:25  
**schedule** 25:22 26:2,3 183:13  
**scholarly** 105:19  
**school** 15:9,15,24 58:23 59:16,16  
 59:17,20 61:2 88:23  
**science** 59:21 68:8,10,18 69:9 70:6

70:9,10,12,13,14,16,22 71:3,6,10  
 71:13,17 72:2,4,5,7,8 74:16,17  
 171:14,14,15  
**Sciences** 61:3  
**scientific** 69:15 71:12 83:8  
**scope** 16:3 31:14 34:25 35:4 56:16  
 57:5,18 75:13  
**screen** 24:17,18 106:16  
**scroll** 10:13 16:24 25:18 104:22  
**SCULLY** 2:10  
**sealing** 3:7  
**Sean** 112:3  
**search** 36:10 37:21 38:6,15,25  
 40:11 41:5 42:25 43:4,7,12,16,18  
 43:25 44:11,14 45:14 46:17 48:24  
 49:12,21 50:5,14 51:6,11,13,20  
 52:14,16 53:8 55:10 62:15 65:5  
 65:11,22 66:8,15 83:4,6 95:11,19  
 99:12 101:8,13,18 103:3,5,16,18  
 103:23 104:6,7,25 106:15,22  
 108:18 110:5,10,12 111:13  
 113:14 114:24 120:7,8 121:23  
 122:15,19 124:19 128:7 137:14  
 145:13,23 147:18 152:3 167:10  
 167:15 168:15 170:20 174:18  
 177:23 183:10  
**searches** 102:13,17  
**searching** 66:14 98:7  
**second** 33:2 56:5,14 89:9 95:14  
 97:25 101:11 113:9 147:8 160:21  
**secondary** 12:5  
**section** 12:19 16:19 26:12 27:14,18  
 28:9 48:23 49:5 51:14 60:12 95:9  
 114:3  
**sections** 35:22  
**see** 10:14 13:25 16:24 24:12,14,19  
 25:12 26:12 27:5,10 28:6,6 29:10  
 36:15 45:10 46:7 47:8,10 48:25  
 49:8,22 50:17 51:9,13 52:16 81:7  
 85:6 95:20 98:4,9 102:14 103:3  
 104:8,25 106:15 109:24 113:9,18  
 114:5,11 137:16 140:25 147:9,13  
 147:21 151:14 152:20 156:12  
 158:10 170:15 173:9 177:3  
**seeing** 96:10  
**seek** 80:2 94:10  
**seeker** 43:10,11,22,23  
**seekers** 99:6  
**seeking** 43:19 91:22 92:10 102:6  
 106:5 155:10 165:18  
**seen** 18:14 45:17 66:19 112:20  
 122:3,5 178:18  
**select** 136:15  
**selected** 101:3  
**selecting** 66:25 67:8  
**selection** 66:21 67:8,12  
**senior** 11:17 179:17,17  
**sense** 76:17 134:15 160:6

**sent** 9:25  
**sentence** 52:13,17 95:15 113:18  
 145:22 147:16,21 157:7  
**separate** 4:10 87:21 160:7  
**separated** 51:2,5 65:12 86:4 98:25  
 115:3 141:19 157:20 159:4  
 160:14,18 162:4,7,16 164:10,24  
 169:16  
**separation** 31:16,19,23 35:7,13  
 36:11 43:20 49:5 61:19 82:18  
 147:18 164:9,20 165:2 172:17  
**series** 6:8  
**serve** 33:15  
**services** 42:5  
**serving** 32:12,21,22 33:4  
**set** 26:5 43:21 44:9 45:15 59:5  
 82:15 83:4 113:11 145:20 146:25  
 147:3,4 163:18 170:15 180:23  
 184:7,15  
**sets** 27:11  
**setting** 7:18 129:20 152:15  
**settled** 123:6 178:24  
**seven** 45:10 47:8 125:19 127:7  
 128:5 170:7,19 174:19  
**severed** 164:4 177:20  
**share** 166:20,24 167:10,15  
**shared** 96:16  
**SHEARMAN** 2:15  
**sheet** 38:22  
**short** 44:11 180:14  
**show** 83:12 172:17  
**showed** 106:21  
**showing** 157:17 178:4 179:3  
**shown** 78:18 80:25 147:9  
**shows** 170:7  
**sic** 78:19 114:16  
**side** 157:18  
**sign** 71:21  
**signed** 3:16,18 182:19  
**significance** 50:24 53:6  
**significant** 90:2,5  
**significantly** 39:19 176:3 177:19  
**similar** 36:14,25 37:6 40:24 44:16  
 45:16 49:7,17 60:19 75:16 76:2  
 98:24 99:7 114:18 123:10 150:14  
 152:23 155:20,23 159:9 171:19  
**similarity** 66:18 73:13,22 171:10,15  
**similarly** 49:24 159:6 172:5  
**simple** 116:10 165:18  
**simplifying** 116:15  
**simply** 19:6,7 118:25  
**sir** 11:12 58:18 72:17 80:5,18  
 107:24 113:25 117:24 123:12,20  
 126:22 132:25 138:5 145:5  
 149:24  
**sit** 15:18 83:20 88:13  
**site** 140:10 177:21,25  
**sites** 102:18,24 167:6,11,22 168:9

|  |  |   |
|--|--|---|
| 168:11,14<br><b>sits</b> 91:8<br><b>sitting</b> 89:25 91:6 96:21 101:9,14<br>105:25 121:13 126:11 129:11<br>140:4,11,17 141:9<br><b>situated</b> 150:14 155:20,24 159:7<br>172:5<br><b>situation</b> 116:9<br><b>situations</b> 179:24<br><b>six</b> 17:24 88:22,24 89:13 124:11<br>125:18 127:7 128:5 147:20,24<br><b>sixteen</b> 19:21,24<br><b>skill</b> 170:14 180:23<br><b>skilled</b> 150:25 151:25<br><b>skills</b> 13:13,19 14:19 79:18 154:15<br>169:10,15,25 170:4,10<br><b>slowly</b> 10:13<br><b>snapshot</b> 108:18 163:12<br><b>SOC</b> 136:7,8,25<br><b>somebody</b> 150:20 173:24<br><b>sorry</b> 24:19 26:20 55:3 62:4 75:6<br>134:8 150:9 153:3 176:23<br><b>sought</b> 49:7,16 84:15 171:5<br><b>sound</b> 81:24<br><b>sounds</b> 106:13 121:12 145:20<br><b>source</b> 44:3 96:8 104:15,19,21<br>105:4,6 125:22 127:5,17 130:6,24<br>134:21<br><b>sources</b> 12:22 96:19 98:17 99:9<br>100:5,17,17 105:13,23 134:11<br><b>Southern</b> 1:2 124:17,23 125:7,14<br>125:15 127:14<br><b>space</b> 72:6<br><b>speak</b> 7:5 106:5<br><b>speaking</b> 97:14 100:21 101:15<br>119:13 122:4<br><b>specialized</b> 73:12<br><b>specialties</b> 143:9<br><b>specialty</b> 143:20<br><b>specific</b> 12:5 14:14 17:7 27:8,9,13<br>37:17,18 39:14,17 44:14,24 45:9<br>45:13,21 46:15 47:18 55:21,23<br>56:25 63:20,20 64:3,5,9,10,18<br>65:3,23 66:8,10,13 70:11 73:19<br>76:5 77:2 80:12,25 84:22 86:24<br>92:10 93:23 122:20 132:4 135:8<br>135:14,18 145:15 146:13,17,20<br>148:18 149:4 152:17 155:25<br>161:11 168:24 180:18<br><b>specifically</b> 7:16 66:17 78:20 80:7<br>80:19 82:7 144:18 152:13 165:9<br><b>specificity</b> 102:22<br><b>specifics</b> 116:7,8 128:13<br><b>speculation</b> 179:11,21<br><b>speculative</b> 179:5<br><b>Speights</b> 118:10,17 119:6,24<br>120:17 122:5 123:4,7,10,13<br>128:15 | <b>spelled</b> 11:18,18<br><b>spend</b> 98:6 101:8,13,17 102:6<br>103:23 104:7,24 110:5<br><b>spending</b> 43:24<br><b>spent</b> 33:18 74:14 106:5<br><b>split</b> 21:5<br><b>spoken</b> 98:21<br><b>spreadsheets</b> 12:10<br><b>spring</b> 55:11<br><b>ss</b> 182:4<br><b>stagnant</b> 163:3,5,9<br><b>Staller</b> 1:19 5:12,23 6:1,4 7:1 8:1<br>9:1 10:1,4,5,6,11,16,17,19,20<br>11:1 12:1 13:1 14:1 15:1 16:1<br>17:1 18:1 19:1 20:1 21:1 22:1<br>23:1 24:1,9,10,12 25:1,6 26:1<br>27:1 28:1 29:1 30:1 31:1 32:1<br>33:1 34:1 35:1 36:1 37:1 38:1<br>39:1 40:1 41:1 42:1 43:1 44:1<br>45:1 46:1 47:1 48:1,22 49:1 50:1<br>51:1 52:1 53:1 54:1 55:1 56:1<br>57:1 58:1 59:1 60:1 61:1 62:1<br>63:1 64:1 65:1 66:1 67:1 68:1<br>69:1 70:1 71:1 72:1 73:1 74:1<br>75:1 76:1 77:1 78:1 79:1 80:1<br>81:1 82:1,6 83:1 84:1,2,7 85:1<br>86:1 87:1 88:1 89:1 90:1 91:1<br>92:1 93:1 94:1,22 95:1,7 96:1<br>97:1 98:1 99:1 100:1 101:1 102:1<br>103:1,24 104:1,2,4 105:1 106:1<br>107:1,18 108:1 109:1 110:1 111:1<br>112:1 113:1 114:1 115:1 116:1<br>117:1 118:1 119:1 120:1 121:1<br>122:1 123:1 124:1 125:1 126:1<br>127:1 128:1 129:1 130:1 131:1<br>132:1 133:1 134:1 135:1 136:1<br>137:1 138:1 139:1 140:1 141:1<br>142:1 143:1 144:1,23 145:1 146:1<br>147:1,7 148:1 149:1 150:1 151:1<br>152:1 153:1,11 154:1 155:1 156:1<br>157:1 158:1 159:1 160:1 161:1<br>162:1 163:1 164:1 165:1 166:1<br>167:1 168:1 169:1 170:1 171:1<br>172:1 173:1 174:1 175:1 176:1<br>177:1 178:1 179:1 180:1 181:1,2<br>182:7,17 183:4,8,9,10<br><b>stamp</b> 30:4<br><b>stance</b> 124:22<br><b>standard</b> 43:15 45:15 86:24 87:2<br>120:25<br><b>standards</b> 43:12 44:9 151:12 154:9<br><b>standing</b> 15:20 85:10<br><b>standpoint</b> 46:8 69:15 98:23 131:8<br><b>start</b> 45:8<br><b>started</b> 90:20 107:2 160:11<br><b>starts</b> 47:9 139:3<br><b>stat</b> 132:14<br><b>state</b> 1:24 5:18,22,24 15:19 16:9,12 | 16:16 22:2 44:9 79:4,25 80:12<br>81:3,3,10 85:10,14,22 86:6,20<br>87:14,15,17,22 88:3,17,18 89:15<br>89:24 91:13,19 93:11,17,17,18,23<br>93:25 94:3,6,7 95:12 102:18<br>182:4,24 184:5<br><b>stated</b> 74:19<br><b>statement</b> 23:16,21 95:16,20 98:9<br>98:11,17 100:4 112:5 122:8,17<br>123:18<br><b>statements</b> 96:17<br><b>states</b> 1:2 16:5,18 45:17,17 50:20<br>73:19 80:8 83:13 86:7 88:9<br>102:19,22 120:10 144:23<br><b>states'</b> 102:23<br><b>statistic</b> 41:2 142:20<br><b>statistical</b> 77:4,22 154:9 157:2<br>158:13<br><b>statistics</b> 46:14 76:25 114:4 115:2<br>116:24 117:4,6,10,16 118:6,16<br>128:17<br><b>stats</b> 119:11,18 120:5,11 123:25<br>124:9 132:9,18 133:9,17 134:4<br>135:7,17,23 136:4,9,17 137:5<br>166:19 171:4<br><b>status</b> 163:17<br><b>Stenotype</b> 1:23<br><b>Stephen</b> 11:17,17<br><b>steps</b> 55:25 133:7 137:11<br><b>STERLING</b> 2:15<br><b>Steven</b> 120:15<br><b>stick</b> 163:19<br><b>stipulate</b> 4:22<br><b>stipulated</b> 3:4,10,15 4:2,14 5:5,6,7<br><b>STIPULATIONS</b> 3:2<br><b>stop</b> 160:19 161:5<br><b>stopped</b> 155:10 161:2<br><b>stragglers</b> 162:9<br><b>Street</b> 6:2<br><b>students</b> 60:10,13 90:8<br><b>studies</b> 10:10 17:13 34:8 38:11<br>40:23 120:22<br><b>study</b> 23:17 72:5,6,10 88:18,21<br>89:10,13,17 90:5 111:9 112:17,18<br>172:20<br><b>studying</b> 81:11 90:3<br><b>sub</b> 72:21<br><b>subcategories</b> 129:12 138:22<br><b>subclassifications</b> 129:18 130:9<br><b>subdisciplines</b> 72:18<br><b>subfield</b> 72:25<br><b>subfields</b> 72:23 73:7<br><b>subject</b> 56:9,12,15 57:9 59:23 60:16<br>60:25 61:18 68:2<br><b>subscribed</b> 182:19<br><b>subsequent</b> 31:18,23 36:11 45:18<br>49:5 147:18 179:2<br><b>subsequently</b> 29:8 |
|--|--|---|

|   |   |   |
|---|---|---|
| <b>subspecialty</b> 143:24<br><b>substance</b> 9:14 12:16,21 16:21<br><b>substantially</b> 162:25 178:12<br><b>subsumed</b> 148:15<br><b>successful</b> 177:23<br><b>suffer</b> 8:23<br><b>suggest</b> 36:2 74:17 80:12 81:3 154:13<br><b>suggesting</b> 80:18,24 87:2 145:21 149:6 170:21 179:15 180:20<br><b>suing</b> 80:15<br><b>suitable</b> 76:16,17 79:11 80:21 82:9 85:18<br><b>Suite</b> 6:2<br><b>sum</b> 46:12<br><b>summarized</b> 51:23<br><b>summarizes</b> 49:14<br><b>summary</b> 12:9 25:12 46:23 47:21 48:10 144:20<br><b>super</b> 86:23<br><b>supervisor</b> 170:25<br><b>supplied</b> 155:9 172:21<br><b>support</b> 99:9,18,25 100:15 124:12<br><b>supporting</b> 100:4<br><b>supposed</b> 8:12 100:9<br><b>sure</b> 7:2 32:20 38:3 39:2 41:15 45:24 47:4,22,25 54:3 55:23 70:22 72:16 80:10 91:7 107:10 115:14 138:2 141:21,22 150:5 164:16 166:24 169:6,22 178:10<br><b>surrounding</b> 93:13 164:25<br><b>survey</b> 44:24 61:4,6 66:4<br><b>sustained</b> 45:19 48:3<br><b>swear</b> 4:21,24<br><b>swing</b> 175:9,11<br><b>swift</b> 114:16<br><b>sworn</b> 3:18 5:17 6:9 184:7<br><b>system</b> 29:11<br><b>systems</b> 69:15 | <b>taken</b> 1:20 48:21 52:9 90:23 95:4 112:7 126:5,19 133:7 153:15 154:22 160:9 182:8<br><b>takes</b> 77:13 180:13<br><b>talk</b> 75:4 92:23 102:21 107:6 118:25<br><b>talked</b> 61:7<br><b>talking</b> 39:25 55:9 116:13<br><b>tallied</b> 38:2 43:18<br><b>tally</b> 38:21<br><b>target</b> 98:6 99:11<br><b>task</b> 37:19<br><b>tax</b> 95:24,25 96:3,8,10,15 97:12,15 97:21,25 176:10 178:19<br><b>teachers</b> 131:6,8<br><b>team</b> 179:17<br><b>Teleflex</b> 121:11<br><b>telephone</b> 4:11<br><b>teletron</b> 132:23<br><b>tell</b> 6:10 30:5 39:6 72:21 135:13<br><b>telling</b> 57:7<br><b>temperature</b> 112:8<br><b>Temple</b> 14:17 15:8,21 58:19,21 61:22 62:2<br><b>temporary</b> 175:22 179:25<br><b>ten</b> 172:12<br><b>tend</b> 173:4<br><b>tended</b> 43:4 44:2<br><b>tendency</b> 107:19 159:23<br><b>tender</b> 181:4<br><b>term</b> 19:4,5 32:17,22 68:12,13,17 71:3 73:5 109:9 116:2,5,10,13 117:2 134:9 138:4 142:22 154:6 154:25 171:21 172:4 180:14<br><b>terminated</b> 65:5 67:3 91:3,16 177:17<br><b>termination</b> 46:6 88:25<br><b>terms</b> 57:11 171:2 174:19<br><b>test</b> 134:21 155:22<br><b>tested</b> 134:16,25<br><b>testified</b> 5:19 9:4 21:7 56:22 74:20 120:6 122:9 123:2 128:10 146:8 167:17 170:11<br><b>testify</b> 8:16,20 11:25 40:8 54:16,18 57:6 119:15 121:4 122:10 123:5,8 123:17 125:17,20 126:25 127:14<br><b>testifying</b> 6:7 11:21,23 32:23 40:4 64:20 92:14 121:21 124:18,24 142:9<br><b>testimony</b> 6:21 8:2 9:17 11:3 21:20 21:23 22:4,18,19,20,22 23:12,17 25:21 32:4 54:13 56:16 57:19,24 68:23 75:13 81:15 82:6 107:11 108:8 117:14 118:5,15 121:21 123:20 124:25 125:12 127:9 133:2,22 142:8 182:8,11 184:9<br><b>text</b> 49:4<br><b>textbook</b> 60:22 | <b>thank</b> 13:8 28:3 51:8 58:2 66:12 97:4 107:18,24 108:15 113:2 161:22 181:3<br><b>theory</b> 19:9 151:2<br><b>thereof</b> 53:21 59:20 146:15 166:2<br><b>thin</b> 81:5<br><b>thing</b> 163:21<br><b>things</b> 35:17 134:10 143:4<br><b>think</b> 18:21 25:25 32:11 47:16 49:14 50:16 56:22 57:20,21 78:13 95:25 104:13 107:16 115:16 128:5 131:4 132:22 140:18 144:13 153:7 162:24 165:13,14 165:18 170:7 171:13 174:5 175:19 177:12 178:2 179:20 180:2<br><b>third</b> 89:16 98:3 139:14<br><b>third-parties</b> 93:23<br><b>third-party</b> 134:20<br><b>thirds</b> 155:20<br><b>Thirteen</b> 58:25<br><b>thought</b> 19:9 39:22 75:4 82:23 107:9 146:16<br><b>thousand</b> 20:8<br><b>three</b> 15:18,19 35:4,10,17,22 43:12 48:22,24 73:19 78:8,14,16 88:9 88:14,16 95:19 144:23 155:17,17 157:7 171:23<br><b>threshold</b> 174:15<br><b>throw</b> 54:22<br><b>throwing</b> 54:23<br><b>tied</b> 64:3 66:17<br><b>time</b> 1:22 3:12 5:3 6:22 7:6,12,12 8:3 23:21 33:4,5,21 34:2 41:22 43:13,20 44:22 46:2 48:14,17 49:19 50:15 51:21 52:20 53:5,7,8 53:11,17 55:15,15 57:17 70:4 74:15 75:14 77:20 79:9 84:5 85:22 86:21,22 87:4,11,12,20,21 88:6,25 89:5 90:20,22 91:2,14 98:6 99:11 101:8,12,16 102:5 103:23 104:7,24 110:5 113:11 114:21 116:20 120:10 124:25 134:17,23 148:21 151:18 152:19 152:20 153:4 156:2,6 157:13 158:8 159:10,24 160:10 161:4 163:6,12 165:2 173:2 175:13 177:22 178:14 181:2,3<br><b>timeframe</b> 56:11<br><b>times</b> 19:3 20:8 36:23 38:25 60:9,9 107:7 157:7<br><b>title</b> 139:18 140:3<br><b>titles</b> 47:11<br><b>today</b> 5:10 6:21 7:18 8:17,21 9:7 10:17 11:24 17:14 38:9 75:13 96:21 101:9,14 107:7 114:15 126:11 140:4,11 144:13 146:13 153:4 |
| <b>T</b>  |   |   |
| <b>T</b> 1:1 2:1 3:1 4:1 5:1,15 182:2 183:6 184:2,2<br><b>table</b> 47:8 49:20,21,22,23,24 50:4 50:21 51:9 114:8,13 138:19 139:12 140:23 141:17,23 143:15 145:14 147:9 148:2,3,8 150:17 153:18 161:16,23 162:12,23 163:14,23,25 164:12,23<br><b>take</b> 6:18,21 7:8 8:3,7 33:24,24 41:10 47:2 48:13,14,15 52:24 55:25 77:17 86:6 88:23 91:9 94:15,19,23 109:24 114:22 126:13 134:12 137:11 141:19 143:16 146:7 147:24 148:23 149:6 150:19 156:6,17,19,20 157:9 158:21 162:2,15,19 164:3 165:6 173:12 174:2,11,20   |   |   |

|  |   |  |
|--|---|--|
| <p><b>today's</b> 8:2 9:10,17 34:20 146:22<br/> <b>told</b> 36:3 127:9 162:24<br/> <b>Toni</b> 1:22 4:23 5:17 10:13 24:4,6,23<br/> 31:24 69:23 70:3 78:10 86:15<br/> 103:21 104:22 106:11 108:6<br/> 121:25 142:18 184:4,19<br/> <b>top</b> 10:10 24:16 64:16 66:2 69:8<br/> 104:8 108:22 109:2,17,21 114:2<br/> 124:21 125:7,11 142:3 167:12<br/> <b>topic</b> 60:8 63:6 64:10 66:20 102:10<br/> 102:15,22<br/> <b>topics</b> 71:24 103:3<br/> <b>tort</b> 60:22<br/> <b>total</b> 23:23 51:10,22 52:24<br/> <b>totaled</b> 23:22 43:18<br/> <b>totality</b> 46:20 48:10 82:11 113:17<br/> <b>totally</b> 44:8 46:13<br/> <b>tracking</b> 160:19 161:2,5<br/> <b>trade</b> 149:5 152:4<br/> <b>trades</b> 149:21<br/> <b>traditional</b> 131:8<br/> <b>train</b> 107:8<br/> <b>trained</b> 56:19 145:18,19 152:5<br/> 180:23<br/> <b>training</b> 13:20 14:13,15 15:2,6,11<br/> 15:14,17,21,24 47:15 54:5 67:17<br/> 73:12,23 80:14 145:4 146:24<br/> 151:7 154:3,14<br/> <b>transacted</b> 155:23,24<br/> <b>transactions</b> 53:14<br/> <b>transcript</b> 107:17 181:10 182:8,10<br/> 184:8<br/> <b>transferrable</b> 170:14<br/> <b>transferring</b> 171:7<br/> <b>transitioned</b> 168:6<br/> <b>transpired</b> 158:2,10 159:6<br/> <b>transportability</b> 169:25 170:4,13<br/> <b>trash</b> 137:22,23<br/> <b>treated</b> 130:23<br/> <b>trial</b> 3:13 9:4 13:17,21 22:19,22<br/> 54:17,19 60:11 75:14 142:8<br/> <b>trier</b> 122:25<br/> <b>true</b> 12:2,18 27:2 51:7 54:15 64:4<br/> 73:10 88:11 89:3 92:3 97:6<br/> 100:12 103:14 125:11 140:14<br/> 173:15 182:10,12 184:8<br/> <b>truth</b> 6:10<br/> <b>truthfully</b> 8:16,20<br/> <b>try</b> 107:20 116:25 177:12<br/> <b>trying</b> 38:7 107:10,11 164:23<br/> 171:21<br/> <b>turn</b> 25:5 26:10 48:22 84:18 95:6<br/> 147:6 177:25<br/> <b>turning</b> 12:19 13:24 16:19 42:16<br/> 98:3 113:2<br/> <b>twenty-three</b> 151:9<br/> <b>twice</b> 87:24<br/> <b>two</b> 33:2 35:8 47:20 63:4,13 73:14</p> | <p>75:23 92:23 98:13 101:7,11 105:7<br/> 125:13 128:24 129:2,3,6 139:5<br/> 142:21,25 148:17 152:16 154:11<br/> 155:19 161:7 163:16<br/> <b>type</b> 36:19 37:9 39:10,13 40:16<br/> 64:3,5 73:25 102:14 143:16 157:3<br/> 157:8<br/> <b>types</b> 17:20 34:5,10 37:12 45:10<br/> 150:2<br/> <b>typical</b> 20:14 25:24<br/> <b>typically</b> 34:11 131:5,12,13 132:5<br/> 168:10 170:14 176:18<br/> <b>typing</b> 12:8</p> <hr/> <p style="text-align: center;"><b>U</b></p> <hr/> <p><b>ultimate</b> 118:25 122:7,8,11,13,24<br/> 123:3,8<br/> <b>ultimately</b> 21:19 22:7<br/> <b>unable</b> 21:19<br/> <b>unauthorized</b> 4:18<br/> <b>uncomfortable</b> 22:8<br/> <b>underlying</b> 115:12<br/> <b>Underneath</b> 10:11<br/> <b>underscore</b> 10:4,4<br/> <b>understand</b> 6:15,19 7:17,22,24<br/> 35:3 37:8 38:3,4 66:23 69:25 72:4<br/> 72:7 101:5,24 106:8 109:9 119:23<br/> 126:17 130:2 133:21 149:24<br/> 154:24 156:5,15 158:18 163:10<br/> 177:10 178:10<br/> <b>understandable</b> 6:13,17<br/> <b>understanding</b> 15:25 16:10 20:25<br/> 21:6 28:18 53:9,11 54:7,25 55:12<br/> 94:20 100:8 119:5,20,21,22 122:4<br/> 122:24 123:4 130:19 156:10<br/> <b>unemployability</b> 117:10<br/> <b>unemployed</b> 102:6 154:7<br/> <b>unemployment</b> 44:16 95:17,18,23<br/> 96:5,6,13,14,22,25 114:4,10<br/> 115:22 116:23 117:4,6,15 118:6<br/> 118:16 128:8,16 138:24 140:22<br/> 141:25 142:14,25 143:6,8,20,25<br/> 144:5 147:10 150:8 158:20<br/> 159:12 160:2,11 163:16 164:24<br/> 165:11,22 166:3,13<br/> <b>unemployment's</b> 158:16<br/> <b>unfortunately</b> 25:18 64:15 143:23<br/> 150:6<br/> <b>union</b> 34:8<br/> <b>United</b> 1:2 45:17 120:10<br/> <b>universe</b> 39:15,25<br/> <b>University</b> 14:17 15:22 58:19,21<br/> 59:17,18,19 60:18 61:2 62:21,23<br/> 62:25<br/> <b>University's</b> 15:9<br/> <b>unreasonable</b> 172:18<br/> <b>unskilled</b> 150:25,25 151:18<br/> <b>update</b> 64:25</p> | <p><b>updated</b> 77:9 164:8<br/> <b>updates</b> 77:15,17<br/> <b>upper</b> 33:25<br/> <b>use</b> 13:13,19 14:8,19 15:11,14 44:3<br/> 63:13 68:7 71:12 73:4 109:9<br/> 114:13 116:3 117:5,9 119:10,17<br/> 120:5,8,11 123:24 134:2 138:14<br/> 157:8 158:24 159:2 162:5,7,14,17<br/> 164:2,7,12,13 169:12<br/> <b>uses</b> 71:10 152:19<br/> <b>utilized</b> 131:21</p> <hr/> <p style="text-align: center;"><b>V</b></p> <hr/> <p><b>v</b> 114:3 118:17 126:2,3<br/> <b>VAGNINI</b> 2:3<br/> <b>vague</b> 56:17 73:15 86:23 135:20<br/> 138:10<br/> <b>validation</b> 67:12<br/> <b>VALLI</b> 2:3<br/> <b>valuation</b> 13:10<br/> <b>valuations</b> 34:7<br/> <b>value</b> 61:15<br/> <b>variables</b> 142:21,25<br/> <b>various</b> 12:22 17:20 38:11 59:5<br/> 70:25,25 102:13,16,18,23,24<br/> 103:4 114:17 149:13 167:10<br/> 170:17<br/> <b>vary</b> 33:19<br/> <b>verbal</b> 7:8,10 29:3 101:20 115:25<br/> 156:16 160:5<br/> <b>verify</b> 96:9,20<br/> <b>version</b> 29:10,18,19 30:2,3<br/> <b>versus</b> 118:10 119:6,24 120:17<br/> 121:11,14,17 123:14<br/> <b>vet</b> 70:25<br/> <b>vice</b> 16:18<br/> <b>videoconference</b> 4:9,15<br/> <b>view</b> 85:24 91:20,24<br/> <b>vignette</b> 60:14<br/> <b>Villanova</b> 14:5,7 59:16,24,25 60:20<br/> 61:11,14,24 62:3,4,7,8,11,14<br/> <b>violation</b> 4:18<br/> <b>vita</b> 147:2<br/> <b>vitae</b> 59:6 64:14 183:8<br/> <b>vocation</b> 46:16 151:17,22 152:5<br/> 153:20<br/> <b>vocational</b> 58:5 170:12<br/> <b>vocations</b> 151:10<br/> <b>voice</b> 174:5<br/> <b>volume</b> 151:3</p> <hr/> <p style="text-align: center;"><b>W</b></p> <hr/> <p><b>W</b> 182:2<br/> <b>W-E-X-L-E-R</b> 28:10<br/> <b>wait</b> 6:23 7:3<br/> <b>waived</b> 3:8<br/> <b>Walnut</b> 6:2<br/> <b>want</b> 36:2 38:3,20 39:5 42:20 47:3</p> |
|--|---|--|

|  |   |  |
|--|---|--|
| 47:4,22 69:2 80:25 82:21 84:8<br>103:2 107:22 152:4,6 153:8<br>163:19 175:6,19 178:8 181:3<br><b>wanted</b> 40:6 47:16 86:5 101:15<br>102:4 106:3 174:23<br><b>wants</b> 42:19<br><b>wasn't</b> 23:22 35:21 76:14 84:4<br>88:24 93:10,19 94:6,12 127:21<br>164:14 166:17<br><b>way</b> 39:7 42:18 68:13 71:4 136:3<br>184:13<br><b>we'll</b> 47:23 48:14 75:22 94:24<br><b>we're</b> 7:17 33:19 38:7 39:25 82:21<br>84:22 113:23 116:13 138:19<br>153:7 157:25 158:2,3,8 175:12,12<br>175:19 177:12<br><b>we've</b> 122:20<br><b>web</b> 4:11 5:11 102:18,24 104:20<br>108:21<br><b>website</b> 99:4,8,22 110:16 112:9<br><b>week</b> 43:13,24 51:13 52:2,10,16<br>88:24 95:19 98:8 99:10 104:12<br>113:15 160:21,24<br><b>weekly</b> 52:7,8<br><b>weeks</b> 44:21,21 51:25 53:5 88:22<br>89:13 147:12 148:4,5,8 149:5<br>151:9,13 153:24 155:19,21<br>157:21,23,23 160:21 161:6,7,10<br>161:12<br><b>went</b> 107:3 134:8<br><b>weren't</b> 48:3 93:22,24 94:2 172:5<br><b>Wexler</b> 28:10,12,16,19 29:9 30:23<br>98:20,21 99:3 100:20<br><b>Wexler's</b> 28:23 30:19<br><b>WHEREOF</b> 184:15<br><b>wide</b> 69:11 179:18<br><b>willing</b> 11:22 21:22<br><b>wish</b> 8:3<br><b>Withdrawn</b> 9:8 34:23 40:21 90:12<br>90:15 109:4<br><b>witness</b> 1:20 4:8,9,21,24 5:2,10,16<br>10:14 16:23 24:24 32:12,18 42:21<br>71:23,24 72:15 78:13,17 84:4,10<br>94:23 125:3 128:9 142:9 169:17<br>174:5 175:12 181:4,6,8,14 183:3<br>184:6,9,15<br><b>women</b> 128:21 149:4<br><b>won</b> 63:17<br><b>word</b> 19:7 55:17,17 69:18<br><b>worded</b> 71:5 126:17<br><b>words</b> 136:20 171:2,24<br><b>work</b> 17:3 19:11 21:9,14 22:10,16<br>30:16 31:14 32:13,20 33:8,13,14<br>33:17,22 34:5,10,17,25 35:5,16<br>43:12,20 60:12 62:14 63:20 64:16<br>64:17 65:3,7,18,25 66:2,5,9,21,24<br>67:7,11 76:18,19 85:19 93:18,19<br>95:19 98:25 99:2 135:15 148:12 | 148:19 152:13 154:11 155:10<br>159:18 169:21 172:22 180:18<br><b>workarounds</b> 92:12<br><b>worked</b> 21:2 65:19 94:8 97:18<br>152:6<br><b>workers</b> 128:18 139:4 148:4 150:23<br>150:24 156:7<br><b>working</b> 20:9,12 33:6 34:13 39:15<br>41:21 53:12 60:2,20 89:21 98:5<br>99:12 101:18 106:4 149:17<br>152:14 155:8<br><b>works</b> 10:19<br><b>world</b> 152:7,21 157:10<br><b>worth</b> 82:17 174:25<br><b>wouldn't</b> 74:5 141:13 162:17<br>164:13 173:19 175:2<br><b>wrap</b> 175:19<br><b>write</b> 145:21,24<br><b>writing</b> 22:17<br><b>written</b> 4:17 12:7 100:10,13 110:6<br><b>wrong</b> 18:22 39:23 113:11<br><b>wrongful</b> 17:22 46:6<br><b>www.thebalancecareers.com</b> 105:2 | <b>1-10</b> 1:11<br><b>1,000</b> 23:8 37:4,23 38:10,12 39:21<br>40:4,8 41:17 65:19,21<br><b>1.61</b> 51:12,25 52:7 54:11<br><b>1:37</b> 94:14<br><b>10</b> 33:20,20 34:2 44:20 77:14,16<br>94:23 183:8<br><b>100</b> 39:2,18,20 40:5,8 65:21 150:10<br>161:6,7,10,12<br><b>10001</b> 2:8<br><b>10004</b> 2:13<br><b>10222</b> 2:17<br><b>104</b> 183:10<br><b>106</b> 43:18 51:10 52:24 53:4 75:23<br>172:18<br><b>11-13-20.PDF</b> 24:8<br><b>11:00</b> 107:3<br><b>11:05</b> 1:15<br><b>11530</b> 2:4<br><b>12</b> 49:25<br><b>12:10</b> 42:18<br><b>12:20</b> 48:14<br><b>13</b> 31:2<br><b>13.7</b> 152:2<br><b>13th</b> 29:20<br><b>14</b> 50:17,20<br><b>14th</b> 2:8<br><b>15</b> 33:20 132:10<br><b>16</b> 20:6 41:13,19 50:17<br><b>1608</b> 6:2<br><b>17</b> 36:15 50:13 88:5 91:11 160:25<br>163:4<br><b>17.0</b> 147:12<br><b>17.36</b> 151:13<br><b>18</b> 173:9,10<br><b>18-cv-08188</b> 1:7<br><b>19</b> 162:7 164:11,21<br><b>19103</b> 6:3<br><b>1996</b> 93:2 174:17 180:24<br><b>1st</b> 45:4 159:2 |
|  | <b>X</b>  |  |
| <b>X</b> 1:3,14 183:2,6  |   |  |
|  | <b>Y</b>  |  |
| <b>Yang</b> 126:2,3,21<br><b>year</b> 21:8,10,12 41:13,19,24 42:3<br>42:14 50:6 75:24 77:16 87:24<br>153:24 154:8,12 158:17 160:24<br><b>years</b> 19:21,24 20:6 58:25 61:5<br>64:15,24 75:17 77:14 79:22 81:8<br>82:12 92:7,22 93:4,6,9 97:5 98:21<br>99:5,15 127:7 128:5 144:24 161:8<br>163:16 174:16<br><b>yesterday</b> 9:13<br><b>York</b> 1:2,24 2:4,8,8,13,13,17,17<br>5:18 43:9,11 44:9 45:5,16,22 54:8<br>75:15 79:15,16 85:11,14 86:6,20<br>87:3,18,23 88:3 90:18,21 91:4,13<br>91:15 95:13,17 99:22 102:20<br>124:18,24 125:14,16 155:12<br>172:2 182:4,24 184:5<br><b>Yorker</b> 107:19,23  |   |  |
|  | <b>Z</b>  |  |
| <b>Zip</b> 134:21<br><b>Zoom</b> 4:11 107:5  |   |  |
|  | <b>0</b>  |  |
| <b>0.54</b> 52:15<br><b>000001</b> 50:2  |   |  |
|  | <b>1</b>  |  |
| <b>1</b> 10:5,6 24:14 47:19 51:23 172:2<br>183:8   |   | <b>2</b> 4:5 24:9,10 183:9<br><b>2,500</b> 22:19,23<br><b>2:00</b> 94:25<br><b>20</b> 33:24 34:4 42:2 56:5 81:8 82:12<br>92:7,22 93:4,6,9 97:5 98:12,14,18<br>100:6,14,19 101:3 104:11,17<br>105:5 144:24<br><b>2001</b> 73:18 145:22<br><b>2005</b> 23:9 118:2<br><b>2008</b> 67:16 90:21 152:7<br><b>2010</b> 64:24<br><b>2017</b> 45:4 47:19 50:6,9,10,22,25<br>51:12 52:5,10,14,21 86:5 87:24<br>91:9 114:10 145:16 148:5 157:20<br>158:9 159:4,5,18 160:2,3,4,10,12<br>160:15,18 161:12,20 162:8,9,12   |

|  |  |  |
|--|--|--|
| 163:7,8,16 164:22 172:3<br><b>2018</b> 50:6,7 51:12 52:5,11 53:3<br>64:25<br><b>2019</b> 86:4 161:9,13,17,19,24,25<br>162:4,13,17,24 163:6,9,13,17,19<br>163:21,25 164:5<br><b>2020</b> 28:17,20,24 31:3 45:5 47:19<br>52:22 56:11 57:14,17 113:6<br>145:16 172:3<br><b>2021</b> 1:15 55:12 64:24 87:19 159:2<br>182:9,20 184:16<br><b>220</b> 2:8<br><b>23.7</b> 156:20 157:23<br><b>23rd</b> 52:22<br><b>24</b> 183:9<br><b>25</b> 43:24 98:8 99:10 104:11 113:15<br>128:2 183:13<br><b>26</b> 23:13,15 153:24<br><b>26(a)</b> 146:3,7<br><b>26.7</b> 149:5<br><b>27</b> 155:19,21 160:21<br><b>28</b> 4:5<br><b>28th</b> 2:12 | <b>6</b> 45:4 51:12 78:12<br><b>6,409</b> 45:7 47:9 74:24<br><b>60</b> 55:9<br><b>600</b> 2:4<br><b>608</b> 24:15,20<br><b>65</b> 33:3<br><b>67.9</b> 153:21<br><b>68</b> 153:24 |  |
|  | <hr/> <b>7</b> <hr/>   |  |
|  | <b>7</b> 113:6<br><b>70</b> 34:2<br><b>702</b> 121:8<br><b>74</b> 154:6<br><b>75</b> 33:4  |  |
|  | <hr/> <b>8</b> <hr/>   |  |
|  | <b>801</b> 6:2   |  |
|  | <hr/> <b>9</b> <hr/>   |  |
|  | <b>9.6</b> 147:11 148:4,5 157:21,23<br><b>90</b> 173:5   |  |
| <hr/> <b>3</b> <hr/>   |  |  |
| <b>3</b> 78:19 103:25 104:2 108:12,14,15<br>183:10<br><b>30</b> 1:15 42:2 50:22,25 52:14 55:9<br>182:9<br><b>30.4</b> 149:5 152:3<br><b>300</b> 39:4 172:11<br><b>303</b> 50:2 51:24<br><b>30th</b> 50:17 51:11 178:16 184:16<br><b>335</b> 22:17,22 34:12<br><b>36.6</b> 148:8<br><b>37</b> 44:21   |  |  |
| <hr/> <b>4</b> <hr/>   |  |  |
| <b>4</b> 108:13<br><b>4:10</b> 175:12<br><b>4:15</b> 181:14<br><b>40</b> 43:24 64:16,16 66:2,2 98:8 99:10<br>113:15<br><b>45</b> 128:21 151:13   |  |  |
| <hr/> <b>5</b> <hr/>   |  |  |
| <b>5</b> 183:4<br><b>50</b> 148:6<br><b>500</b> 37:9,24 38:5,19 40:7<br><b>500ish</b> 39:23<br><b>512</b> 84:18,23<br><b>54</b> 128:22 151:13<br><b>55</b> 54:11,23,24<br><b>551</b> 45:11 47:7,12,16<br><b>594</b> 43:16<br><b>599</b> 2:16   |  |  |
| <hr/> <b>6</b> <hr/>   |  |  |